87-1840

Supreme Court, U.S.
FILED
MAY 10 1988
JOSEPH F. SPANIOL, JR.
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No. 87-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

RICHARD L. SOLYOM, *et alia*,

Appellants,

v.

MARYLAND–NATIONAL CAPITAL PARK AND PLANNING COMMISSION, *et alia*,

Appellees.

On Appeal from the Court of Special Appeals of Maryland

JURISDICTIONAL STATEMENT *and* APPENDIX

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QUESTIONS PRESENTED FOR REVIEW

I. In the Circuit Court for Montgomery County, Maryland, appellants claimed ownership of an abandoned railroad right of way by virtue of rights of reversion in deeds of 1890, 1891, and 1896; or, in the alternative, by virtue of adverse possession. Prior to trial, appellants moved for summary judgment on the ground that the chain of title upon which appellee Maryland-National Capital Park and Planning Commission relies to support its assertion of ownership of the right of way is void, because the railroad forfeited its Maryland corporate charter before it purported to execute the 1939 deed that constitutes the first link in the chain. The Circuit Court denied appellants' motion and *sua sponte* entered summary judgment for the Park Commission, precluding appellants from attempting to join as the only proper defendants any surviving shareholders of the defunct railroad, and compelling them to go to trial against an improper defendant. After presentation of appellants' evidence at a subsequent trial, on the Park Commission's motion the Circuit Court ruled that the right of way did not revert under the 1890, 1891, and 1896 deeds; and that the undisputed facts appellants proved did not support a finding of adverse possession as a matter of law. Appellants then squarely presented to the Court of Special Appeals the question of whether they were entitled to summary judgment because of defects in the 1939 deed.

Did the Court of Special Appeals deny appellants due process of law in violation of the Fourteenth Amendment to the United States Constitution, by intentionally misapplying Maryland Rule of Procedure 1087 and Maryland Code, Real Property, Section 14-108, and wilfully refusing to consider the invalidity of the 1939 deed?

II. After appellants had presented their evidence at trial, the Circuit Court found, as an undisputed fact, that appellants and their forebears had physically possessed the

abandoned railroad right of way for more than the statutory period necessary to perfect title by adverse possession. But the court held that certain other of their actions negated such title as a matter of law. Appellants then squarely presented to the Court of Special Appeals the question of whether the legal theories the Circuit Court applied to the undisputed facts were erroneous, and appellants were entitled to a finding of adverse possession as a matter of law based on those facts.

Did the Court of Special Appeals deny appellants due process of law in violation of the Fourteenth Amendment, by wilfully refusing to consider the issue of adverse possession, on the spurious ground that appellants had supposedly transgressed Maryland Rule of Procedure 1028(b)(1)(b) by not including in their record extract "the testimony of the witnesses that was offered in support of their claim", even though appellants never contended that any factual finding of the Circuit Court was "clearly erroneous" under Maryland Rule of Procedure 1086, but instead fully accepted and relied on that court's findings?

III. Appellants squarely presented to the Court of Special Appeals the question of whether they are the owners of the railroad right of way because, under the 1890, 1891, and 1896 deeds, the railroad took only easements, which reverted upon abandonment of the line. Central to this question was the legal effect of language in the 1890 deed describing the first transfer in physical relation to "the located center line of the * * * Railroad".

Did the Court of Special Appeals deny appellants due process of law in violation of the Fourteenth Amendment, by wilfully refusing to consider even the existence, as well as the legal effect, of the said language of the 1890 deed?

PARTIES TO THIS PROCEEDING

In addition to the parties identified in the caption hereof, the following have been or are parties to this proceeding:

1. the heirs of Ross Taylor Churchill, plaintiffs and appellants;

2. the Washington Suburban Sanitary Commission, defendant;

3. the Maryland State Department of Assessments and Taxation, defendant-appellee; and

4. Morton Funger, Hermen Greenberg, Albert H. Small, Ralph Ochsman, and Samuel P. Cohen, third-party defendants.

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JURISDICTIONAL STATEMENT

Richard L. Solyom *et alia* respectfully appeal from the judgment of the Court of Special Appeals of Maryland in *Solyom* v. *Maryland National Capital Park and Planning Commission*, No. 1393 (10 June 1987).

OPINIONS BELOW

The opinion of the Court of Special Appeals of Maryland of which appellants seek review is unreported, and is reprinted in the Appendix (App.) hereto at 3a. The opinion of the Circuit Court for Montgomery County, Maryland, which the Court of Special Appeals affirmed, is unreported, and is reprinted in App. at 15a. The orders of the Court of Appeals of Maryland, denying appellants'

petition for a writ of certiorari and motion for reconsideration, are unreported, and are reprinted in App. at 47a and 51a.

JURISDICTION

This is an appeal from a decision of the Court of Special Appeals, wherein that court denied appellants due process of law, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States, by effectively refusing to hear appellants' appeal from the decision of the Circuit Court for Montgomery County, Maryland. The Court of Special Appeals rendered its decision on 10 June 1987. The Court of Appeals denied appellants' petition for a writ of certiorari and motion for reconsideration on 20 November 1987 and 10 February 1988, respectively. Appellants filed their notice of appeal in the Court of Special Appeals on 2 May 1988 (App. at 55a). This Court has appellate jurisdiction under 28 U.S.C. §§ 1257(2) and 2102(c), and under Rules 10 and 12 of the Rules of this Court.

CONSTITUTIONAL PROVISION, STATUTE AND RULES INVOLVED

This case involves the Due Process Clause of the Fourteenth Amendment to the United States Constitution; Maryland Code, Real Property, Section 14-108; and Maryland Rules of Procedure 1028(b)(1)(b), 1086, and 1087. The text of these provisions appears in App. at 59a.

STATEMENT OF THE FACTS

At issue here is title to part of a tract owned by Louis C. Solyom, grandfather of appellant Richard L. Solyom and of Warren Churchill, deceased husband of Ross T. Churchill, whose heirs are also appellants here. Through deeds of 1890, 1891, and 1896, Louis Solyom transferred to the Washington and Glen Echo Railroad, a Maryland

corporation, three strips of land within the tract for a right of way. Appellants assert title to these strips today.

The 1890 deed transferred a strip in "fee simple", but described in physical relation to "the located center line of the * * * Railroad".[1] The 1891 deed transferred two additions parallel to the 1890 strip, again described in physical relation to "the located center line of the * * * Railroad", and explicitly defined as "an addition * * * to each side * * * of the present right of way".[2] The 1896 deed "granted and conveyed" another, connecting strip for "the exclusive right of way" of the railroad.[3] The 1890 and 1891 transfers have collectively been styled the "Mainline Strip", and the 1896 transfer the "Left Fork".

Sometime between 1902 and 1910, the railroad abandoned its right of way through the Solyom estate,[4] as the Circuit Court found.[5]

By deeds of 1897 and 1911, and a deed executed pursuant to his will after his death in 1913, Louis Solyom divided the tract among his children (their interests later passing to the grandchildren, including Richard L. Solyom and Warren Churchill). None of these deeds conveyed the

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[1] Plaintiffs' Trial Exhibit No. 1 (PTE-1), Tab 3. Neither the Maryland courts nor any party hereto have disputed the authenticity or materiality of any of the exhibits cited herein as "PTE".

[2] PTE-1, Tab 4.

[3] PTE-1, Tab 7.

[4] *See* Opinion and Decree, Loughborough v. The Washington and Glen Echo Railroad Co., Equity No. 2611 (Montgomery Cty. Cir. Ct., 27 June 1913).

[5] The Circuit Court held that "certainly the evidence appears to establish no later than June of 1910, the railroad had abandoned its line". "Of that, there can be no doubt." Transcript of Trial Proceedings of 11 September 1986 (T), pp. 9, 16-17, in App. at 20a-21a, 26a.

Mainline Strip or the Left Fork, however.[6] Nevertheless, as the Circuit Court found and no one disputes,

> along about 1918, * * * members of the Solyom family who owned those * * * parcels within the * * * tract, erected a fence * * * traversing the right of way at either side; and for a period of time thereafter, continuing more or less up to the present time, in various fashions * * * did attempt to keep trespassers off the property * * * posted no trespassing signs, and acted * * * as if the property was their own.
>
> * * * * *
>
> What do the facts show * * * ? No question that from a period preceding 1890, to this very day, there are heirs of Lewis Solyom on * * * that parcel. There is no question but that for a period certainly beginning no later than 1918, and even to this date, fences * * * have traversed the former right of way.
>
> * * * * *
>
> Were the Solyoms de facto possessors of the land? In a real sense, of course, they were and continue to be.[7]

In 1920, the predecessor of the Washington Suburban Sanitary Commission entered the property along the abandoned right of way and constructed a sewer line, which has been maintained continuously since.[8]

On 23 February 1939, the Washington and Glen Echo Railroad forfeited its Maryland corporate charter.[9] On 10 April 1939, however, former officers of the defunct corporation purported to execute a deed, identifying the railroad as "a corporation", referring to "a meeting of [its] Board of Directors held March 2?. 1939", affixing the

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[6] *See* T at 9-10, in App. at 21a-22a.

[7] T at 10-11, 29, 39, in App. at 22a, 35a, 42a.

[8] T at 11, in App. at 22a.

[9] PTE-1, Tab 9.

signature of its corporate "president", and conveying by quit claim all its rights of way in Montgomery County to the Capital Transit Company.[10]

From 1950 through 1962, record title to the Mainline Strip and Left Fork passed through a succession of purported owners, finally being taken in 1962 by a group headed by one Morton Funger.[11] That year, the State Highway Department widened a public street running along the tract at one end of the abandoned right of way. The Solyoms received no compensation for the part of the right of way the Highway Department took.[12]

In 1977, the Solyoms—including all the heirs of Louis Solyom *except* Richard L. Solyom [13]—appellee Maryland-National Capital Park and Planning Commission, and the Funger group executed a land contract [14] and two deeds [15] that the Park Commission contends transferred the Mainline Strip and Left Fork to it (in addition to other parts of the tract not in dispute here). The land contract referred to "all the heirs of Louis C. Solyom" signing "as to Part 3", and the Funger group signing "as to Part 6". (Although Richard L. Solyom was listed among the heirs, he refused to execute the contract.) "Parcel D" in "Part 3" was defined as "all of the [Solyom] family's interest in Funger, et al's 25,511 sq. ft.[,] * * * 4,275 sq. ft.", which embraced the Left Fork. "Part 6" referred simply to "Funger, et al * * * 21,464.5 sq. ft.", which embraced the Mainline Strip. In their deed to the Park Commission, the Solyom heirs (except for Richard L. Solyom) referred to

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[10] PTE-1, Tab 10.

[11] T at 11-12, in App. at 22a-23a.

[12] T at 37-38, in App. at 41a-42a.

[13] T at 35, in App. at 39a-40a.

[14] PTE-1, Tab 21.

[15] PTE-1, Tabs 22 & 23.

the Mainline Strip as "the former * * * right-of-way line of the * * * Railroad, owned by Morton Funger, et al.", and to the Left Fork as "a former branch of said * * * Railroad (also owned by Morton Funger, et al.)". In 1980, the Solyom heirs conveyed to Richard L. Solyom by quit-claim deed their interest in the Mainline Strip.[16]

Appellants then brought this action in the Circuit Court to quiet title to the Mainline Strip and the Left Fork, raising three arguments:

1. Because the railroad forfeited its charter before it purported as a corporation to execute the 1939 deed through which the Park Commission claims title, that deed is void. Therefore, the Park Commission acquired no interest in the Mainline Strip from the 1977 transactions, and only an 8/9 interest in the Left Fork from the Solyom heirs other than Richard L. Solyom. Moreover, the only proper defendants in this action are any surviving shareholders of the defunct railroad, who should be substituted as defendants for the Park Commission.

2. Even if the 1939 deed is valid and the Park Commission a proper defendant, under the 1890, 1891, and 1896 deeds the railroad took only easements for a right of way, which reverted to the Solyoms upon abandonment of the line in 1910. As the result of the 1977 and 1980 transfers by the Solyom heirs, Richard L. Solyom acquired an 8/9 interest in the Mainline Strip and a 1/9 interest in the Left Fork; and Ross T. Churchill acquired a 1/9 interest in the Mainline Strip.

3. Alternatively, by fencing and otherwise asserting dominion over the right of way from at least 1918, the Solyoms collectively perfected title to it by adverse possession. Thereafter, Richard L. Solyom and Ross T. Churchill acquired their interests as described immediately above.

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[16] PTE-1, Tab 24.

The Circuit Court denied the first argument on appellants' *pre*-trial motion for summary judgment, and *sua sponte* entered summary judgment for the Park Commission.[17] And, after presentation of appellants' case-in-chief, the court denied their second and third arguments in the course of granting the Park Commission's motion to dismiss.

First, the Circuit Court ruled that, notwithstanding its description of the Mainline Strip in physical relation to "the located center line of the * * * Railroad", the 1890 deed supposedly conveyed a fee simple, not an easement subject to reversion. The court conceded that the 1891 and 1896 deeds referred *in haec verba* to a "right of way", "which ordinarily imports an easement and not a fee", but held the 1890 deed extrinsic evidence to interpret the 1891 and 1896 deeds as transferring fees, not easements, too.[18]

Second, although the Circuit Court complimented appellants' witnesses as "people of integrity" who "testified honestly and openly", and found "no question" that the Solyoms occupied the tract "from a period preceding 1890", fenced both ends of the right of way "beginning no later than 1918 * * * to this date", and "were and continue to be" "de facto possessors of the land",[19] it nevertheless rejected appellants' claim of adverse possession, on several legal grounds.

a. None of the *pre*-1914 deeds, the court noted,

> include the right of way. Now these documents are being executed by people in the family, and they themselves are acknowledging * * * that they don't have

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[17] Docket Entries Nos. 72-80, Solyom v. Maryland-National Capital Park and Planning Commission, Equity No. 75515 (Cir. Ct. Montgomery Cty. Md.).

[18] T at 17-27, in App. at 26a-34a.

[19] T at 16, 29, 39, in App. at 26a, 35a, 42a.

> any claim of right in this property, because they are not conveying it * * *.[20]

b. Referring to the installation of the sewer in 1920, the court felt

> persuaded by the fact that the Sanitary Commission was there at all * * * without established rights to be there * * *.
>
> * * * * *
>
> What it suggests is * * * that perhaps the Solyom family * * * believed that someone else was the owner of that property, was not in fact claiming it in fee.
>
> * * * * *
>
> So that the first element [in proof of adverse possession] * * * of hostile claim, the Court is not persuaded * * * that the Plaintiff's case is made in that regard.[21]

c. Taking up appellants' assertion of collective adverse possession, the court claimed that

> [t]hat is an extremely difficult concept to accept, that there was any kind of meeting of the minds * * * with regards to this strip that we are owners and will continue to act as owners.
>
> Of course, they continued to use it collectively * * * but did they hold themselves out with any kind of collective understanding. Maybe they thought they did, but the Court is not persuaded that that is the kind of interaction and joint decision that permit them to be considered as a sole unit. It is not persuasive that they are related and that they used the property in common.[22]

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[20] T at 30-31, in App. at 36a.

[21] T at 31-32, 33, in App. at 37a, 38a.

[22] T at 34, in App. at 39a.

d. Then, turning to the 1977 transaction on which the Park Commission primarily relied, the court emphasized that

> most of the Solyom heirs, with the exclusion of [Richard L. Solyom] * * * signed a document which said that Morton Funger owned, at a minimum, the mainline strip, and there was no claim there. * * *
>
> Now, it is not a question of estoppel. It is nothing of that matter. It is merely a piece of evidence. It is a document that recites that somebody, and not they, are the owners of that property, and they signed it.[23]

Bolstering this theory of supposed admissions against interest, the court referred to the widening of the road in 1962, when

> [t]here was [no] compensation paid * * * to any Solyom heir for that portion * * * that covered the right-of-way.
>
> Now, again, one reads this as an item of evidence. If somebody in the Solyom family really believed that * * * by pr[e]scription for a 20-year period prior to 1962, they had become the owners, why weren't they around in 1962 * * * demanding compensation * * *.
>
> Again, it is not an estoppel argument. It is simply datum * * * that the Court looks at to say what does the Solyom family understand that they own.[24]

Concluding on the question of adverse possession, the court summarized by saying that "[t]hat is all it takes, * * * that they are showing some acknowledgment that maybe somebody else had a claim".[25]

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[23] T at 35, in App. at 39a-40a.

[24] T at 38, in App. at 41a-42a.

[25] T at 38, in App. at 42a.

On appeal to the Court of Special Appeals, appellants raised the same three arguments presented below, but bolstered by the Circuit Court's favorable findings of fact as to the Solyom family's *de facto* possession of the right of way. *First,* they argued that the true construction of the 1890, 1891, and 1896 deeds hinged on two key facts: (i) that the 1891 and 1896 deeds explicitly convey "rights of way" only, the 1891 deed even referring back to the interest in the 1890 deed as a "right of way", too; and, particularly, (ii) that the 1890 deed, although not itself referring to a "right of way", ambiguously describes the interest transferred in physical relation to "the located center line of the * * * Railroad", permitting the interpretation (confirmed by the 1891 and 1896 deeds) that only a right of way was conveyed. Affirming the Circuit Court on this point, the Court of Special Appeals held that the 1890 deed was unambiguous, conveyed a fee, and served as extrinsic evidence fixing the same interpretation for the 1891 and 1896 deeds as well. However, in interpreting the 1890 deed, the Court of Special Appeals completely left out of its analysis and refrained from quoting or even acknowledging as a "pertinent par[t]" of the document the crucial descriptive language referring to "the located center line of the * * * Railroad"—thereby simply refusing to address the issue appellants presented to it.[26]

Second, appellants argued that the facts the Circuit Court found compelled the legal conclusion that their forebears had perfected title to the right of way by adverse possession, and asked the Court of Special Appeals to reverse on the law. Again affirming the Circuit Court, the Court of Special Appeals misrepresented appellants' argument as "assail[ing the trial-court's] judgment as clearly erroneous under Rule 1086", and refused to address the adverse-possession issue at all, because appellants "have not printed in their record extact the testimony of the witnesses that was offered in support of their claim", and therefore had violated Rule 1028(b)(1)(b) by

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[26] Slip Opinion at 2-8, in App. at 4a-8a.

not presenting in the extract evidence "essential to [the Court of Special Appeals'] determination of the issue of whether the [trial court] was clearly erroneous".[27]

Third, appellants argued that the Circuit Court should have granted their *pre*-trial motion for summary judgment on the invalidity of the 1939 deed. Affirming the Circuit Court, the Court of Special Appeals once again refused to address the issue, saying that appellants' "contention * * * is immaterial to the right of appellants to maintain an action to quiet title to land to which they have failed to establish title".[28]

In each of these instances, the Court of Special Appeals denied appellants any meaningful appeal at all: (i) in the case of the 1890, 1891, and 1896 deeds, by purposefully ignoring the very language in the 1890 deed that appellants contended was crucial to their interpretation of all the instruments; (ii) in the case of adverse possession, by purposefully pretending that appellants challenged the Circuit Court's factual findings as "clearly erroneous", when actually they *relied* on those findings, raising only the trial-court's errors of law; and (iii) in the case of the 1939 deed, by purposefully neglecting the *pre*-trial context of appellants' motion for summary judgment, and the reality that, had the Circuit Court not erroneously denied that motion, there would have followed no trial at all (at least against the Park Commission).

Appellants then sought review in the Court of Appeals by petition for a writ of certiorari, explicitly attacking the decision of the Court of Special Appeals as a naked denial of due process of law in contravention of the Fourteenth Amendment. The Court of Appeals denied the petition, and appellants' subsequent motion for reconsideration.

Appellants now seek this Court's review.

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[27] Slip Opinion at 9, in App. at 10a.

[28] Slip Opinion at 10, in App. at 11a.

SUBSTANTIALITY OF THE QUESTIONS PRESENTED

This case presents a glaring example of a state court's using obviously improper interpretations of state court-rules and statutes to refuse to decide certain legal issues on the merits, because an honest decision of those issues would result in economic loss and political embarrassment to an agency of state government. The arguments the Court of Special Appeals advanced for not addressing the questions appellants raised are so specious and devoid of support in long-standing interpretations of the Maryland rules of court and substantive law as to evidence an intent wilfully to deny appellants procedural due process of law (a fair hearing), in order to deny them substantive due process of law (the ownership of the disputed right of way)—in short, in complicity with the Park Commission, to steal the land from appellants by suppressing their right to prove their entitlement to it under Maryland law. This, then, is a case of *judicial expropriation* under the forms, but without the substance, of law; a cynically open violation of basic federal constitutional protections and guarantees in the guise of an "application" of state appeals procedures; and a mockery of the judicial process—let alone any rational conception of fairness—that cannot be countenanced here, unless this Court is willing to contribute to the collapse of the entire edifice of American civil justice in the hoots and jeers of a public increasingly outraged by what it perceives (and in this case rightly) as the disdain with which elitist judges, in service of their own political and social agendas, contrive to frustrate the simplest demands of the common man for justice.

Long ago, it was held that the power to tax may not function as the power to destroy "while this Court sits". The instant case presents the question of whether the power to judge may operate as the power to destroy within this Court's purview.

I. The Court of Special Appeals' wilful refusal to address the issue of the invalidity of the 1939 deed so strikingly violates Maryland Rule of Procedure 1087, Maryland Code, Real Property, Section 14-108, and that court's own precedent as to amount to an intentional denial of due process of law in violation of the Fourteenth Amendment.

A. The Court of Special Appeals' wilful refusal to address the issue of the invalidity of the 1939 deed lacks any colorable basis in Maryland law. *First,* the court neglected to observe its own Rule 1087, mandating that "[o]n appeal from a final judgment, every interlocutory order which has previously been entered in the action shall be open to review". The court's rationalization for sidestepping Rule 1087—namely, that appellants' "fail[ure] to establish title" at trial somehow rendered "immaterial" on appeal their contention as to the *pre*-trial denial of summary judgment—is nonsense. If appellants' *pre*-trial motion for summary judgment should have been granted, then the case proceeded *erroneously* to a final decree, no matter in whose favor; and the incorrectness of the motion's denial was necessarily before the Court of Special Appeals for decision.[29] It simply is not, never has been, and could not rationally be the law that an erroneous denial of summary judgment can be "mooted" by a subsequent trial-judgment against the moving party.[30]

Second, the Court of Special Appeals' notion that denial of the motion was "immaterial" because appellants "failed to establish title" flies in the face of Maryland Code, Real Property, Section 14-108, which that court disingenuously cited in support of its theory. "[E]stablish[ed] title" is not a condition precedent to filing an action under that section, or to prevailing on a motion for

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[29] *See, e.g.,* Kikas v. County Commissioners of Baltimore County, 200 Md. 360, 363 (1951) (so holding with respect to denial of a demurrer).

[30] *E.g.,* Melbourne v. Griffith, 262 Md. 486, 487 (1971) (decided under Maryland Court of Appeals Rule 887, the analogue of Rule 1087).

summary judgment. Rather, the section permits any person to sue where he is "in constructive and peaceable possession of [the subject property], either under *color* of title or *claim* of right by reason of * * * adverse possession". Standing to sue depends not on actual title, but solely on a *bona fide* assertion of title, which appellants indisputably had when they made their motion.[31] As the Maryland Court of Appeals has made clear, jurisdiction over a bill to quiet title does not rest on a plaintiff's prior proof of ownership (such as by adverse possession).[32] Neither is it necessary for a plaintiff to prove title to make out a justiciable issue or controversy in the premises.[33] Rather, a suit to quiet title brought explicitly *to establish title* under a *bona fide* claim is actionable.[34] And, obviously, in the course of such a suit a plaintiff may make all appropriate *pre*-trial motions—and, should those motions be denied, may appeal the denials and demand a hearing of and decision on his appeal—just as in any other type of litigation.

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[31] Even a trial-judgment for appellants would not have satisfied the Court of Special Appeals' new and capricious standard, because it would have "establish[ed] title" in appellants *only as against the Park Commission*, not as against any other potential claimant. In their motion for summary judgment, appellants conceded that the invalidity of the 1939 deed left the surviving shareholders of the railroad as potential claimants. But the shareholders could not even be joined as necessary defendants, and the issue of title as against them litigated, until the trial court granted summary judgment on the 1939 deed. Thus, the Court of Special Appeals' theory raises the Kafkaesque paradox that appellants supposedly were not entitled to litigate the invalidity of the 1939 deed until they had successfully "establish[ed] title", but could not finally "establish title" until they had successfully litigated the invalidity of the deed!

[32] Romney v. Steinem, 228 Md. 605, 609 (1962).

[33] Shapiro v. Board of County Commissioners for Prince George's County, 219 Md. 298, 301-03 (1959) (applying predecessor of Real Property section 14-108).

[34] Cuffley v. Hammond, 228 Md. 162, 167 (1962).

B. The glaringly inexcusable nature of the Court of Special Appeals' refusal to address this issue lies in the undeniable invalidity of the 1939 deed. The deed recites that it was "[m]ade • • • by the Washington and Glen Echo Railroad Company, a corporation", and is signed by one "E.D. Merrill", identified as "President" of the "corporation". The deed also recites that it was

> executed • • • pursuant to resolution of the Board of Directors of the • • • Railroad Company, passed at a meeting of said Board • • • held March 22, 1939 • • •.[35]

The deed, however, is utterly void—because, as certified by the Maryland State Department of Assessments and Taxation, *the railroad forfeited its corporate charter on 23 February 1939.*[36]

Application of the Court of Special Appeals' own decision in *Cloverfields Improvement Association, Inc.* v. *Seabreeze Properties, Inc.*[37] compels this conclusion. In *Cloverfields*, a "deed and assignment from Guaranteed to Association occurred • • • after Guaranteed's corporate charter had been declared forfeited". Seeking to determine the "effect of the assignment", the court explained that

> [i]n *Atlantic Mill & Lumber Realty Co.* v. *Keefer*, 179 Md. 496, 499-500 • • • (1941), the Court [of Appeals] said that all power which had been granted to a corporation whose charter is forfeited is ". . . inoperative, null, and void. This organization . . . is not legally in existence as a corporation and cannot function as a corporation." The Court [of Appeals] stated in *Callahan* v. *Clemens*, 184 Md. 520, 528 • • • (1945), that forfeiture puts ". . . an end to the corporate existence." Patently, if the corporate existence terminates upon forfeiture, and the assets are *ipso facto*

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[35] PTE-1, Tab 10.

[36] PTE-1, Tab 9.

[37] 32 Md. App. 421 (1976), *aff'd*, 280 Md. 382 (1977).

> transferred to the directors, as trustees, then the corporate officers, as officers, are devoid of authority to act for the corporation. * * *
>
> We hold that, inasmuch as the charter * * * had been forfeited, the purported postforfeiture corporate deed and assignment * * * by * * * Nichols as president * * * were nullities and consequently of no force and effect.[38]

Similarly, here, the 1939 deed was executed—approximately 1½ months after forfeiture of the railroad's charter—by the defunct "corporation's" nonexistent "president", explicitly signing for the "Railroad Company Incorporated Under The Laws of The State of Maryland". So, under *Cloverfields*, the 1939 deed *must* be a "nullit[y] and * * * of no force and effect".

Cloverfields also faced the contrary argument that,

> even if the corporate deed and assignment * * * are nullities, the officers * * * Nichols, president, and Wallman, secretary, should be held to have executed both the deed and the assignment in the capacity of surviving trustees of the defunct corporation.

However, rejecting this theory, the court explained that Nichols and Wallman were not simultaneously exercising "two distinct capacities" (corporate officers and surviving trustees), or inadvertently signing "in the wrong capacity". To the contrary:

> Nichols was not the president * * * at the time * * * because there were no such corporations *in esse*. If there were no such corporations, then were could be neither a corporate president nor a corporate secretary. *Ergo*, when Nichols executed the deed and assignment, he could not have done so in a dual capacity, *i.e.*, president and trustee, because he was no longer corporate president.
>
> Moreover, it cannot be contended * * * that Nichols signed * * * in the capacity of surviving trustee. It is

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[38] 32 Md. App. at 425-26.

> manifest from the executed documents that Nichols signed as corporate president. Having signed as president, having had his signature as president attested and witnessed as such, and having acknowledged both the deed and the assignment as corporate president, we would be hard pressed to hold * * * that Nichols was really signing in the capacity of surviving trustee.[39]

Here, the factual parallel to *Cloverfields* is exact: E.D. Merrill was not acting in "two distinct capacities", because the "corporation" he purported to represent as "president" no longer existed. And he manifestly signed the 1939 deed as "president", his signature so attested by H.D. Crampton, "secretary", and witnessed by two others. Furthermore, directly above Merrill's signature the deed recites that "the grantor has caused these presents to be signed by E.D. Merrill, its President, and attested by H.D. Crampton, its Secretary, and its corporate seal to be * * * affixed". So, as in *Cloverfields*, any rational person would be "hard pressed to hold * * * that [Merrill] was really signing in the capacity of surviving trustee".

Finally, the *Cloverfields* court also rejected that argument that Nichols and Wallman had signed as trustees. Explaining that, "in order for surviving trustees * * * to pass title to what were corporate assets, the majority of the * * * trustees must act", the court noted that

> Wallman did not sign the deed in any capacity but merely attested to the signature of Nichols * * *. Only Nichols' signature was witnessed, and only he acknowledged the deed and the assignment.
>
> Under the laws of this State, a deed is required to be executed and acknowledged. * * * Thus, even if Wallman's signature attesting to the "corporate act" were * * * an execution of the deed, there was no acknowledgment by her. Hence, the deed would be defective.

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[39] *Id.* at 426-27.

> * * * We think it beyond serious question that the signature of * * * Wallman did no more than bear witness to the signature of * * * Nichols * * *.
>
> We hold that Nichols and Wallman did not sign * * * as surviving trustees, and, therefore, the * * * instruments are invalid.[40]

Here, this reasoning from *Cloverfields* applies word for word. Only E.D. Merrill signed the 1939 deed, as purported corporate "president". H.D. Crampton, the corporate "secretary", merely attested to Merrill's signature; Crampton did not execute the deed himself. Thus, even if Merrill were a "surviving trustee" his signature alone would not suffice to validate the deed.

So, the Park Commission's chain of title, resting as it does on the void 1939 deed, is a mere nullity and undeniably so.

C. The Court of Special Appeals' disingenuous refusal to decide the issue of the invalidity of the 1939 deed amounts to a wilful denial of appellants' rights to procedural and substantive due process of law. *First*, in light of the Maryland Court of Appeals' rulings on the justiciability of claims to title under Maryland Code, Real Property, § 14-108 and its predecessors, the Court of Special Appeals' refusal to decide the issue of the 1939 deed is plainly arbitrary and capricious, if not self-evidently intended by that court to evade its responsibility to protect appellants' constitutional proprietary rights (or, conversely, to license the Park Commission to retain paper title to property it does not, and never did, own). This amounts to a classic violation of procedural due process.[41]

Second, in light of the practical result that the Park Commission retains paper title to the disputed strips free

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[40] *Id.* at 431-32.

[41] *See* American Railway Express Co. v. Kentucky, 273 U.S. 269, 273 (1927).

from appellate-court consideration of the invalidity of the foundation for that title in the 1939 deed, the Court of Special Appeals' arbitrary refusal to decide the issue amounts to a judicial taking of appellants' property, not only without compensation, but even without the barest articulation of any rationale for that taking (that is, any rationale for the "validity" of the 1939 deed). This constitutes a classic violation of substantive due process.[42]

II. The Court of Special Appeals' wilful refusal to address the issue of adverse possession so strikingly violates Maryland Rules of Procedure 1028 and 1086 as to amount to an intentional denial of due process of law in violation of the Fourteenth Amendment.

A. The Court of Special Appeals' wilful refusal to address the question of adverse possession rests on that court's misrepresentation of the issue before it, and lacks any colorable basis in Maryland law. *First, pace* the court's studied mischaracterization, appellants *never and under no circumstances* "assail[ed the] judgment [of the Circuit Court] as clearly erroneous under Rule 1086".[43] *At no time and under no circumstances* did appellants ask, suggest, or imply their desire that the court review "the testimony of * * * witnesses that was offered in support of their claim"[44], or any other evidence presented at trial. To the contrary: appellants *relied* on the trial-court's findings of fact, raising on appeal *only* errors of *law*.

Thus, the court's complaint that appellants had not complied with Rule 1028(b)(1)(b) by not including "the testimony of * * * witnesses" in their record extract, and that

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[42] *See* Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673 (1930); Corrigan v. Buckley, 271 U.S. 323, 331-32 (1926); Roberts v. New York City, 295 U.S. 264, 277-78 (1935).

[43] Slip Opinion at 9, in App. at 10a.

[44] *Id.*

therefore that court was "unable to address the [adverse-possession] issue"[45], is preposterous. For that issue involved *no* question of disputed "testimony", only facts found by the Circuit Court that appellants did *not* challenge *and the totality of which their record extract contained,* in full conformity with Rule 1028(b)(1)(b). Indeed, even the Park Commission "substantially adopt[ed] the statement of facts presented by the appellant[s]" (except for a "few specific * * * aspects" not relevant here).[46] No one imagined the appeal involved disputed facts, questions as to testimony, or claims that the trial-court's factual findings were "erroneous"—until the Court of Special Appeals, *sua sponte* and without any rational basis, conjured that view to avoid deciding the adverse-possession issue.

Appellants cannot discover one instance in which either the Court of Special Appeals' Rule 1028 or the Maryland Court of Appeals' analogous Rule 828[47] has been interpreted as aberrantly as the Court of Special Appeals did here. The case-law teaches that either rule permits judicial refusal to address an issue *only* where "the issue * * * is the adequacy of the evidence"[48], "the insufficiency of the evidence"[49], or whether the verdict is against the weight of the evidence[50]; where resolution of the "issues * * * requires review of the testimony"[51]; where the "credibility of witnesses" and "questions of estoppel" are

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[45] *Id.*

[46] Brief of Appellees in No. 1393 (Ct. Sp. App.), at 1-2.

[47] *See* Eldwick Homes Ass'n v. Pitt, 36 Md. App. 211, 212 (1977) (Rule 828 "almost identical" to Rule 1028).

[48] Love v. Bachman, 44 Md. App. 282, 287 (1979).

[49] Link v. Link, 35 Md. App. 684, 689 (1977). *Accord,* Lawton T. Sharp Farm, Inc. v. Somerlock, 52 Md. App. 207, 211-12 (1982).

[50] Loyd v. Dorchester Bd. of Educ., 50 Md. App. 668, 674 (1982).

[51] Spivey v. Harris, 64 Md. App. 619, 621 (1985). *Accord,* Eldwick Homes Ass'n v. Pitt, 36 Md. App. 211, 213 (1977).

raised[52]; or where appellant "has not furnished * * * any record abstract whatsoever"[53].

Second, the rules do not permit judicial avoidance of the issues where—as here—only questions of law are raised[54]; where "the facts * * * are quite simple, and there is little dispute concerning them"[55]; in an appeal that arose "on what amounted to (but was not characterized as) an agreed statement of facts"[56]; if "the appellants' brief contains a statement of facts which the appellees accept as accurate and sufficient"[57]; and where the briefs and the opinion of the trial court set out uncontroverted facts[58]. Dispositive in this regard are *Bishop* v. *Richard*[59] and *Queen* v. *Anderson*[60]. In *Bishop,* the court noted that, as here, "appellants in their arguments * * * stated that the facts found by the chancellor were substantially correct, but assign as error the application of the law to those facts"—and then summarized the agreed facts and decided

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[52] Lane Manor Corp. v. Byers, 199 Md. 406, 410 (1952). Here, as the Circuit Court's opinion made exquisitely clear, *no* questions of credibility or estoppel are possible. *See ante,* pp. 7, 9.

[53] One 1983 Toyota v. State, 63 Md. App. 208, 210 (1985).

[54] Aitchison v. State, 204 Md. 538, 543 (1953).

[55] El-Masri v. State, 228 Md. 114, 115 (1961).

[56] Gatewood v. State, 268 Md. 349, 354 (1972).

[57] Crossley v. Hartman, 248 Md. 196, 197 (1967).

[58] Sunshine Laundry Corp. v. White, 197 Md. 582, 585 (1950). *See* Seybolt v. Baber, 203 Md. 20, 26 (1952): "Where the appendix to the appellants' brief consists of * * * the trial judge's opinion, but contains none of the testimony, the Court of Appeals confines its considerations to * * * the facts found by the judge." This, of course, is precisely what appellants asked the Court of Special Appeals to do.

[59] 193 Md. 6 (1948).

[60] 191 Md. 522 (1948).

the appeal.[61] In *Queen,* the court noted that, again as here, appellants "'adopt[ed] the statement of facts' in the opinion of the lower court"—and then decided the appeal on those facts.[62]

These decisions mirror the plain language of Rule 1028 (b)(1), which mandates inclusion in the record abstract only of "such parts of the record as may *reasonably* be *necessary* for the determination of the *questions presented* by the appeal"; and of subsection (b) thereof, which requires inclusion only of "[s]o much of the evidence * * * as is material to any question *the determination of which depends upon the sufficiency of the evidence*". This appeal presenting *no* evidentiary question at all, Rule 1028(b)(1)(b) was simply irrelevant, on its face.

Third, to the extent the decision of the Court of Special Appeals could be construed as enunciating a never-before-heard-of "interpretation" of Rule 1028—to wit, that that court may *sua sponte* decide to "review" *uncontested* factual findings of a trial court and then arbitrarily refuse to consider purely legal issues *sub judice* where the record extract does not contain evidence subtending those *uncontested* findings (notwithstanding what the full trial record contains)—both Rule 1028 and Rule 1086 discountenance it. For, as a practical matter, if the Court of Special Appeals could "review" *uncontested* facts *sua sponte* at an appellant's peril, Rule 1028 would effectively require *every* record extract in *every* case to contain *every* bit of evidence supporting *every* uncontested fact, as well as the evidence respecting contested facts—or, in most instances, *all* the evidence in the case! Merely to state this consequence is to expose the absurdity of the Court of Special Appeals' position. In addition, Rule 1086 denies the Court of Special Appeals any authority to "review" *uncontested* factual findings at its whim, but requires the court to

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[61] 193 Md. at 8.

[62] 191 Md. at 525.

> assume the truth of all the evidence and of all the favorable inferences fairly deducible from it tending to support the factual conclusion of the trial court[,]

and to respect determinations of the credibility of witnesses as "a matter to be resolved by the trial court".[63] "If there is any competent, material evidence to support the factual findings below, [the Court of Special Appeals] cannot hold those findings to be clearly erroneous."[64] So, here too, the Court of Special Appeals' action is transparently lawless.

B. The gravity of this lawlessness—as well as its purpose—is cast in sharp relief by the strength of appellants' case for adverse possession. The Circuit Court found that from at least 1918 the Solyoms collectively possessed the right of way, fencing it off and openly and notoriously treating it as their own.[65] These findings, viewed in the light of Maryland case-law, compel the conclusion that the Solyoms acquired title to the right of way by prescription.

Tamburo v. *Miller* found "unequivocal acts of ownership" where the adverse possessor

> occupied the area which he had fenced in with intent to claim it all as his, the fences to be the boundary lines. His possession was exclusive, notorious, actual and hostile. * * * [T]he erection of the barbed wire strands * * * add up to obvious and actual notice to the [owners of record] and the world that [the adverse possessor] was claiming ownership of the * * * land * * *. Considering the character and use of the lot in question, there is little else that could have been done to show evidence more unequivocally of a claim of full ownership. * * * In our view, it is enough.[66]

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[63] Eastern Environmental Endeavor, Inc. v. Industrial Authority of Calvert County, 45 Md. App. 512, 519 (1980).

[64] Staley v. Staley, 25 Md. App. 99, 110 (1975).

[65] *Ante*, p. 4.

[66] 203 Md. 329, 336-38 (1953).

Here, as in *Tamburo*, from 1918 the Solyoms maintained wire fences at both ends of the abandoned right of way, marking the visible boundaries of their claim, and designed to aid in "unequivocal acts of ownership" by excluding trespassers.

Blickenstaff v. *Bromley* held an "actual enclosure" unnecessary "to sustain a claim of adverse user", because "the character, location, and use of lands vary"; and emphasized that over a period of fifty years "there was never an assertion of ownership of the * * * parcel by the [owners of record]".[67] Here, the Solyoms fenced the right of way for at least fifty years. Their "possessory acts" unquestionably "comport[ed] with the ordinary management of similar lands", and were "sufficiently pronounced and continuous to charge the [owners of record] with notice". Yet, as in *Blickenstaff*, "there was never an assertion of ownership of the * * * parcel" by *any* of the *many* purported owners of record until after the Park Commission sought to acquire some of the property by purchase in the late 1970s.

Mauck v. *Bailey* emphasized that the disputed right of way was the adverse claimant's "means of ingress and egress to her property for more than the 20 year period".[68] Similarly, the Solyoms used gates in the fences at both ends of the right of way for "ingress and egress" for more than twenty years, and the right of way itself as a path both to the outside of and within the tract.

Costello v. *Staublitz* ruled a fence evidence of adverse possession where it was created "for the purpose of claiming the * * * line * * * as a visible boundary".[69] That, of course, was why the Solyoms fenced the right of way, too.

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[67] 243 Md. 164, 170-72 (1966).

[68] 247 Md. 434, 442 (1967).

[69] 300 Md. 60, 73 (1984).

Numerous other Maryland cases could be described in detail, were appellants prone to carry owls to Athens.[70]

Arguing against the trial-record and these authorities, the Circuit Court first contended that the *pre*-1914 deeds by which Louis C. Solyom divided the tract somehow "refute" adverse possession, because "[n]one of [these deeds] include[s] the right of way".[71] The deeds, however, are irrelevant, because the Solyoms' adverse possession began only in 1918, *four years after* the last deed was executed.

The Circuit Court then contended that installation of the sewer in 1920 indicated that "the Solyom family * * * believed that someone else was the owner of the property"—and, therefore, lacked the required animus of "hostility".[72] However, as the sewer-authorities had a superseding right to install the line (which the Circuit Court conceded), the absence of "protest" from the Solyoms is irrelevant. Even with record title to the right of way at the time, they would have had no power to stop the work, and therefore no incentive to "protest". In short, as no landowner may lawfully manifest "hostility" to the exercise of governmental authority in the premises, *unlawful* "hostility" can never be required as a condition for acquiring prescriptive title.[73] In addition, the Circuit Court misapplied the "hostility" requirement in this context.

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[70] *E.g.*, East Washington Realty Co. v. Brooke, 244 Md. 287, 294-95 (1966) (adverse possession evidenced by enclosure of strip by fence obvious to persons on nearby road); Peper v. Traeger, 152 Md. 174, 180-81 (1927) (adverse possession secured by three generations of same family residing on land for twenty years); Gulick v. Fisher, 92 Md. 353, 359, 362 (1901) (where claimant used right of way for twenty years without explanation, and record owner made no attempt to secure his rights, court will presume adverse possessor is under claim of right).

[71] T at 30, in App. at 36a.

[72] T at 32, in App. at 37a.

[73] *See* 3 Am. Jur. 2d, "Adverse Possession", § 48, at 140-41. *Cf.* Maas v. Burdetzke, 101 N.W. 182, 183 (Minn. 1904).

> Hostility of possession means only that one in posession of land claims the exclusive right thereto. To be hostile, • • • [t]he possession must be such as to import a denial of the owner's title. Possession that is unaccompanied by any • • • recognition of the right of the real owner is adverse.[74]

For "hostility" to obtain, the adverse possessor must know only that he is occupying the land, and intend not to vacate it.[75] No one—including the Park Commission and the Circuit Court—ever contended that the Solyoms did not satisfy this requirement for more than fifty years.

The Circuit Court then denied the Solyoms could have cooperated to gain adverse possession for the whole family.[76] But judicial precedents are ample for such collective action over more than one generation.[77]

Finally, the Circuit Court argued that, by supposedly acknowledging the title of the Funger group to the right of way in the 1977 transactions, the Solyoms "admitted" they were not adversely possessing the property between

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[74] 3 Am. Jur. 2d, "Adverse Possession", § 50. Thus, the lack of "protest" from the Solyoms to the installation of the sewer is perfectly consistent with the requisite "hostility" to the record owners (that is, claim of exclusive right to the fee). *See, e.g.*, Desch v. Knox, 253 Md. 307, 311-12 (1968).

[75] Bishop v. Stackus, 206 Md. 493, 499 (1956).

[76] T at 33-34, in App. at 38a-39a.

[77] 3 Am. Jur. 2d, "Adverse Possession", § 78. *See* Peper v. Traeger, 152 Md. 174, 180-81 (1927) (three generations of same family residing on land for twenty years); Shaffer v. Baylor's Lake Ass'n, 141 A.2d 583, 586-87 (Pa. 1958) ("some member or members of the • • • family"); Anjaldua v. Richardson, 287 S.W.2d 299, 300-01 (Tex. Civ. App. 1956) (two brothers, and citing other cases involving brothers, a man and his brother-in-law, a brother and sister, and a husband and wife); Souleyette v. McKee, 178 S.W.2d 833, 834-35 (Ky. 1944) (husband and surviving wife).

1918 and any twenty-year period up to 1977.[78] How an "admission" *in 1977* related back to the Solyoms' possession of the property *forty years and more earlier*, the court did not explain. Neither is an explanation possible:

> [A]fter the statute [of limitations] has fully run the title [to property possessed adversely] should be treated as having vested at the date of inception of the adverse possession. Whatever the date, having once vested it acquires the attributes of other vested titles in that it cannot be divested by parol abandonment, by the re-entry of the former owner, o by a failure to continue in possession.[79]

Pace the Circuit Court, after adverse possession has ripened into ownership, mere "admissions" cannot endanger the adverse possessor's title.[80]

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[78] T at 35-37, in App. at 39a-41a.

[79] Trustees of the Broadfording Church of the Brethren v. Western Maryland Ry., 262 Md. 84, 88 (1971). *See generally* 3 Am. Jur. 2d, "Adverse Possession", § 298.

[80] *E.g.*, Rye v. Baumann, 329 S.W.2d 161, 165-66 (Ark. 1959) (giving of deed with exception in favor of record owner); Butler v. Hanson, 455 S.W.2d 942, 946 (Tex. 1970) (affidavit of adverse possessor acknowledging ownership of parcel in another); Fritts v. Ericson, 436 P.2d 582, 585 (Ariz. 1968) (adverse possessor becomes lessee of former title holder); Converse v. Kenyon, 132 N.W.2d 334, 339-49 (Neb. 1965) (adverse possessor recognizes title of former owner during negotiations); Republic National Bank of Dallas v. Stetson, 390 S.W.2d 257, 260-61 (Tex. 1965) (oral or written statements, purchase of land by adverse possessor from former record owner, or disserving recitals in partition deeds or boundary agreements); Beard v. Henn, 190 N.E.2d 345, 347 (Ill. 1963) (admissions or declarations contrary to interest); Maloney v. Bedford, 162 S.W.2d 198, 199 (Ky. 1942) (admissions to or agreements with the former owner).

Even less useful for what the Circuit Court treated as "admissions" against the Solyoms was their failure to demand compensation from the Highway Department in 1962. *See* T at 37-38, in App. at 41a-42a. For, as in the case of the 1977 transactions, this

The flimsiness of the Circuit Court's legal theories against adverse possession points up the injustice of the Court of Special Appeals' intentional refusal to decide the issue.

C. The effect of the Court of Special Appeals' heretofore unheard-of "interpretation" of Rule 1028(b)(1)(b) is intentionally to deny appellants procedural and substantive due process of law, in violation of the Fourteenth Amendment. *First*, as a plainly arbitrary and capricious act, the court's fanciful "interpretation" violates due process for the reasons set out above respecting the ruling on the fictional "immateriality" of the issue of the validity of the 1939 deed.[81]

Second, even were the court's sudden invention of that "interpretation" arguably valid as a matter of Maryland law, it would nevertheless constitute an unforeseeable and unsupported decision on a question of state procedure that denied appellants any meaningful hearing on their adverse-possession claim, thereby denying them federal constitutional rights as well.[82]

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occurred long after title by adverse possession had been perfected, and therefore had no legal consequence thereupon. *E.g.*, La Grange Reorganized School Dist. No. R-VI v. Smith, 312 S.W.2d 135, 139 (Mo. 1958) (title acquired by adverse possession "not lost by • • • mere failure to assert title after it has been perfected"); McCray v. Marshall, 410 S.W.2d 595, 596 (Ark. 1967) (title not lost because adverse possessor allows third party to build structure on property).

Perhaps the Circuit Court erroneously believed that events from 1977 were relevant because the twenty-year period must run up to and including the year of suit on the adverse-possession claim. This, of course, is not the law. 3 Am. Jur. 2d, "Adverse Possession", § 81.

[81] *Ante*, pp. 18-19.

[82] *See* Wright v. Georgia, 373 U.S. 284, 289-91 (1963); NAACP v. Alabama *ex rel.* Patterson, 357 U.S. 449, 454-58 (1958).

III. The Court of Special Appeals' wilful refusal to address the issue of the key language in the 1890 deed denied appellants due process of law in violation of the Fourteenth Amendment.

In light of the foregoing, the Court of Special Appeals' studied silence on the key language in the 1890 deed emerges as simply the final, necessary (albeit craven and obvious) evasion the court employed to frustrate a meaningful appeal in this case. Unable to pretend it did not have to review the deed under Rule 1028(b)(1)(b), and unable to mischaracterize interpretation of the deed as "immaterial", the Court of Special Appeals unashamedly read selectively from the deed, leaving out the language on which appellants relied—and, *mirabile dictu*, "finding" no language relevant to reversion in the deed, because it carefully excluded that language from its opinion, held that the deed contained no such language![83]

Is it any wonder, looking at this palpably dishonest performance, that our governmental institutions—and particularly the courts—are year after year held in ever-lower public esteem and confidence? Even to suggest that this transparent artifice satisfies the standards of due process is to mock the Constitution, and denigrate the judicial function to an exercise in semantic shell-games and rhetorical sleights-of-hand. Moreover, that the Court of Special Appeals felt itself impotent to deny appellants' theory of reversion—except through an abjectly duplicitous refusal to address it—indicates the cogency of that theory (for why hide from what one does not fear?), emphasizing the inequity of allowing the latter court to shirk its responsibility to provide appellants with a constitutionally meaningful hearing by rendering a decision that openly and honestly grapples with the issue.

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[83] Slip Opinion at 2-3, in App. at 4a-5a.

CONCLUSION

This is a case of simple *theft,* masquerading under the guise of law. It is a case of theft of property because appellants have raised serious arguments supporting their claim of ownership of the right of way; but the Court of Special Appeals has refused to address those arguments, for reasons that defy innocent explanation, let alone justification. It is also—and, perhaps, more importantly—a case of theft of public trust, because the Court of Special Appeals has put the pecuniary and political interests of a state agency in retaining a piece of land to which it has no rational legal claim ahead of the court's duty in law and honor to *decide* the case before it *according to the law and without favoritism to any party.* What the Court of Special Appeals has done is not "due process of law" in the Anglo-American tradition. Indeed, it is not *any* "process of law" in the common understanding of that term. Rather, it is the cynical exercise of some species of oriental despotism, in which concepts such as "property", "process", "rights", or even "reason" play no part that might interfere with the application of raw and malevolent power.

Such despotism—cloaked though it may be in the deceptive forms of state law—has no place in this country; and none of its baneful workings should be given lasting legal effect. To that end, probable jurisdiction should be noted.

Respectfully submitted,

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APPENDIX

OPINION OF THE COURT OF SPECIAL APPEALS OF 10 JUNE 1987

UNREPORTED

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 1393

September Term, 1986

RICHARD L. SOLYOM, et al.

v.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION et al.

Gilbert, C. J.
Bell, Rosalyn B.
Karwacki,
JJ.

PER CURIAM

Filed: June 10, 1987

[1] The appellants, heirs of Louis C. Solyom, who died in 1913, filed a bill of complaint in the Circuit Court for Montgomery County on May 22, 1981, seeking to quiet title to land in which they asserted fractional undivided interests. By the time the case was finally tried on its merits at a bench trial before Judge Peter J. Messitte on September 4, 5, 10 and 11, 1986, the only remaining defendant was the Maryland-National Capital Park and Planning Commission, the appellee. At the conclusion of the appellants' case, the court granted appellee's motion for judgment under Rule 2-519(b), concluding that the appellants had failed to establish any title to the land they sought to unencumber in the action.

The realty in question consists of two strips of land, 30 feet in width, which at the turn of this century accom-

modated the railroad of an electric trolley line operated by the Glen Echo Railroad Company. The appellee, through a series of mesne conveyances, has succeeded to the interest which that railroad company formerly possessed in those strips of land. The first parcel, referred to in the proceedings as the Mainline Strip, extended in a northeast direction from River Road for 740 feet; it contained 22,236 square feet. The second parcel, referred to as the Left Fork, branched off the Mainline Strip near its northeastern boundary; it was 237 feet in length and contained 4,275 square feet.

The Mainline Strip was conveyed to the Glen Echo Railroad **[2]** Company by Louis C. Solyom and his wife by deeds dated July 14, 1890 and February 18, 1891. Mr. and Mrs. Solyom conveyed the Left Fork to the same railroad company by deed dated July 21, 1896. Both parcels were part of an eight acre tract that Louis C. Solyom acquired in 1875 in fee simple absolute. The first question that the appellants present is whether the 1890, 1891 and 1896 deeds conveyed a fee simple estate in the real property in question or merely an easement for railroad purposes. Judge Messitte ruled that a fee simple title was conveyed to the railroad and rejected the appellants' assertion that easements created by these conveyances expired when the railroad abandoned all use of the parcels sometime between 1902 and 1910. We agree with the trial judge's construction of the deeds for reasons we now explain.

The 1890 deed provided in its pertinent parts:

> . . . in consideration of the sum of two hundred dollars the said Louis C. Solyom and Sallie J. Solyom, his wife, do grant unto the Glen Echo Railroad Company a corporation existing under the Laws of the State of Maryland all of that piece or parcel of land situate lying and being in said county which is contained within the metes and bounds, courses and distances following to wit: [a metes and bounds description of

the parcel with dimensions of 20 feet by 740 feet is here set forth] containing three hundred and sixty five thousandths of an acre of land in fee simple. And the said Louis C. Solyom and Sallie J. Solyom, his wife, do hereby covenant that they will warrant specially the lands hereby conveyed and that they will execute such further assurances of said land as may be requisite.

[3] The material provisions of the 1891 deed recited:

. . . in consideration of the sum of one dollar, and other good and valuable considerations, we, the said Louis Solyom and Sallie J. Solyom, do grant, bargain sell and convey unto the Glen-Echo Railroad Company, a corporation created under the laws of the State of Maryland, its successors and assigns forever, the following described real estate, situated, lying and being on the said Glen-Echo Railroad, in said Montgomery County to wit; All those certain pieces or parcels of land and premises contained within the following metes and bounds, courses and distances. [a metes and bounds description of the property is here set forth] containing by estimation one half of an acre be the same more or less, and being an addition of a strip of land 5 feet in width to each side of that portion of the present right of way of the said railroad extending through the lands of the said Louis Solyom and Sallie J. Solyom, so that the right of way of said railroad through the lands of the said grantors shall be in all thirty feet in width, fifteen feet in each side of the center line of the right of way of said railroad as at present located: Together with all and singular the improvements thereon, and all the rights, roads, ways, easements, privileges, advantages, and appurtenances thereto belonging or in anywise thereto appertaining.

And we, the said Louis Solyom and Sallie J. Solyom, his wife, convenant to warrant generally the lands and

> premises hereby conveyed, and to execute any and all such further assurances as may be necessary the better to convey the same as aforesaid.

Md. Code (1981 Repl. Vol.), § 2-101 of the Real Property Article provides:

> The word "grant," the phrase "barain and sell," in a deed, or any other words purporting to transfer the whole estate of the grantor, passes to the grantee the whole interest and estate of the grantor in the land mentioned in the deed unless a limitation or reservation shows, by implication or otherwise, a different intent.

[4] That rule of construction, enacted by the General Assembly by Chapter 154 of the Laws of 1856, removes any doubt as to the effect to be given the 1890 deed. The grantors clearly expressed their intention to convey the property described in the instrument in fee simple absolute, that being the whole estate that they possessed in that land. There is no ambiguity and therefore no need to look beyond the four corners of the deed for its interpretation. *Gilchrist v. Chester*, 307 Md. 422, 425 (1986). Moreover, the unambiguous intent expressed in the deed was corroborated by evidence of a letter to Louis C. Solyom from the attorney who represented him in the 1890 transaction with the Glen Echo Railroad Company. That letter, dated July 12, 1890, stated:

> Enclosed I send you the deed to Glen Echo Railroad Company, and the agreement between you and the company. You will see that they vary. The agreement is for the right of way over the land. The deed is for the land itself in fee simple. I called the attention of the railroad company's attorneys to it, when they said that all the land acquired by condemnation had been acquired in fee, and that that was what was meant to be in this case. I don't know that it makes any prac-

> tical difference, for if the land is taken and railroad built, it will be the same thing to you so far as the use of the land is concerned. However, I feel it my duty to call your attention to it. If you are satisfied with it as it is, you and Mrs. Solyom will please execute the deed and return same to me, when I will collect your $200.00 and remit same. If you do not wish to execute the deed in its present shape, let me see you or hear from you.

[5] There can be no doubt that when Mr. and Mrs. Solyom executed the deed two days later, they were fully apprised of the consequences of the document they signed.

With respect to the 1891 deed, the granting clause thereof ("do grant, bargain, sell and convey") compels its construction as passing the entire estate of the grantors to the grantee. Md. Code, *supra*, § 2-101; *Gilchrist v. Chester, supra*. We reject the appellants' arguments that the reference in the deed's description to "the present right of way of the said railroad extending through the lands of the said Louis Solyom and Sallie J. Solyom" constitutes a "limitation or reservation" in the estate conveyed within the meaning of Md. Code, *supra*, § 2-101. As we have just noted in regard to the Solyoms' deed executed only seven months earlier, the Solyoms clearly expressed an intention to convey the entire fee simple title that they possessed in the 20 foot portion of the Mainline Strip to the railroad company. Thus, the 1891 deed's reference to that "right of way" did not in any way indicate an intent to convey any less than the entire fee simple estate that they possessed in the two additions to that "right of way" which were the subject of the 1891 deed. Consequently, we hold that by virtue of the 1890 and 1891 deeds, Glen Echo Railroad Company was vested with fee simple title in the Mainline Strip. Therefore, its abandonment of the railroad sometime between 1902 and 1910 did not affect its title, which has passed through successive owners to the appellee.

[6] Turning to the land referred to as the Left Fork, the material provisions of the 1896 deed conveying that parcel to the Glen Echo Railroad Company stated:

> . . . the said parties of the first part for and in consideration of the sum of Five Dollars and compliance by the party of the second part with the conditions of this grant, have granted and conveyed and by these presents do grant and convey unto said party of the second part, its licensees, successors and assigns the exclusive right of way for the purpose for the construction and operation of its railway over the following described real estate, situate in the County of Montgomery, State of Maryland and described as follows. [A metes and bounds description of the parcel with dimensions of 30 feet by 237 feet is here set forth.] To Have and to Hold the said right of way unto the said party of the second part, its successors and assigns.
>
> Upon condition nevertheless that a double-track railway shall be constructed on said right of way by said party of the second part within six months from the date of this deed.
>
> This Indenture is made and accepted upon the express condition that all right to the right of way secured by the said Glen Echo Railroad Company, by condemnation proceedings through the property of said Solyom on the 25th day of May 1896 is hereby canceled and annulled, and the Glen Echo Railroad Company hereby releases and surrenders to the said Louis C. Solyom all rights and privileges to said right of way so secured by said condemnation proceedings of May 25, 1896.
>
> Upon any breach of the aforegoing conditions the right hereby granted shall cease and revert to the grantors herein according to their respective interests.[1]

[1] There was no breach of these stated conditions.

[7] The granting clause of this deed is ambiguous. Notwithstanding the use of the word "grant," indicating the intention of the grantors to convey the entire interest that they possessed under the rule of construction set forth in Md. Code, *supra*, § 2-101, the grantors' use of the phrase "the exclusive right of way for the purpose for construction and operation of its railway" to describe the subject of the grant creates doubt as to whether the property was conveyed in fee or merely subjected to an easement in favor of the grantee. That being the case, the court properly considered evidence extrinsic to the deed to ascertain the intention of the parties. *Gilchrist v. Chester*, *supra*, 307 Md. at 425. Thus, the language employed in the instrument must be viewed in light of all the facts and circumstances surrounding the transaction. *Green v. Eldridge*, 230 Md. 441, 447 (1963); *Richfield Oil Corp. v. Chesapeake and Curtis Bay Railroad Co.*, 179 Md. 560, 569 (1941); *Hodges v. Owings*, 178 Md. 300, 304 (1940).

This was not an isolated transaction between these parties. The land for the railroad of the grantee's trolley line that was the subject of the 1896 deed was but a branch off the Mainline Strip, which had been conveyed by these grantors to the grantee in the deeds of 1890 and 1891. As pointed out above, the grantors intended to convey a fee interest by the earlier deeds even though the interest was referred to therein in terms of a right of way. Significantly, two later conveyances by Mr. Solyom shed further [8] light on the intention of the grantors in 1896. In 1897 and again in 1911 he conveyed portions of the eight acre tract that was traversed by the grantee's railroad. In both of those deeds he expressly excluded the land referred to as the Mainline Strip and the Left Fork from the land conveyed, evidencing his understanding that he had divested himself of title to these parcels by his deeds of 1890, 1891 and 1896. We therefore hold that the court correctly concluded that the Glen Echo Railroad Company acquired a fee interest in the Left Fork by virtue of the 1896 deed rather than merely an easement.

Next the appellants argue:

> Even if the 1890, 1891, and 1896 deeds granted fee simple interests in the Mainline Strip and Left Fork, after 1918 the Solyom family collectively acquired title by adverse possession to those parcels, which eventually passed to appellants by intestate succession and later *inter vivos* transfers.

It is well settled that in order for a claimant to prevail in establishing title by adverse possession, it is essential that he or she establish that possession for the prescriptive period was actual, hostile, notorious, exclusive, under claim of title, and continuous or uninterrupted. *Costello v. Staubitz,* 300 Md. 60, 67 (1984); *Peters v. Staubitz,* 64 Md. App. 639, 644 (1985). At the conclusion of the testimony at the bench trial of this case, the trial judge, proceeding as trier of the facts under Rule 2-519(b), concluded that the appellants did not meet that **[9]** burden. Although the appellants assail that judgment as clearly erroneous under Rule 1086, they have not printed in their record extract the testimony of the witnesses that was offered in support of their claim of hostile and notorious possession of the Mainline Strip and the Left Fork. Because of their noncompliance with Rule 1028b.1.(b), the record extract does not contain this evidence, which is essential to our determination of the issue of whether the court was clearly erroneous in concluding that the appellants had failed to meet their burden of establishing title by adverse possession. Consequently, we are unable to address this issue. Furthermore, we decline to "ferret out from the record those materials which counsel should have printed in the abstract." *Eldwick Homes Ass'n v. Pitt,* 36 Md. App. 211, 212, *cert. denied,* 281 Md. 736 (1977); *Spivey v. Harris,* 64 Md. App. 619 (1985), *cert. denied,* 305 Md. 245 (1986); *One 1983 Toyota v. State,* 63 Md. App. 208, *cert. denied,* 304 Md. 299 (1985); *Shell Oil Co. v. Ryckman,* 43 Md. App. 1, 4 (1979).

Finally, the appellants assert a defect in the record title held by the appellee. In 1939, the Glen Echo Railroad Company conveyed the Mainline Strip and the Left Fork to the Capital Transit Company, one of the predecessors to the record title now held by appellee. The appellants claim that at the time the Glen Echo Railroad Company made this conveyance, it had forfeited [10] its charter and was without power to convey the property. Whatever the merit of this contention, it is immaterial to the right of the appellants to maintain an action to quiet title to land to which they have failed to establish title. Md. Code, *supra,* § 14-108; *Wathen v. Brown,* 48 Md. App. 655, 658 (1981).

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANTS.

TRANSCRIPT OF THE ORAL FINDINGS AND DECISION OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND, OF 11 SEPTEMBER 1986

TRIAL

[2] IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

Equity No. 75515

RICHARD L. SOLYOM,
ROSS TAYLOR CHURCHILL,
Plaintiffs,

v.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, A PUBLIC BODY CORPORATE,
WASHINGTON SUBURBAN SANITARY COMMISSION,
MARYLAND STATE DEPARTMENT OF ASSESSMENT AND TAXATION,
Defendants,

MORTON FUNGER,

HERMEN GREENBERG,

ALBERT H. SMALL,

RALPH OCHSMAN,

SAMUEL P. COHEN,

Third Party
Defendants.

Rockville, Maryland
September 11, 1986

WHEREUPON, proceedings in the above-entitled matter commenced

[2a] BEFORE: THE HONORABLE
PETER J. MESSITTE, Judge

APPEARANCES:

FOR THE PLAINTIFFS:

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FOR THE DEFENDANT:

D. S. SASTRI, Esq.
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[3] PROCEEDINGS

THE CLERK: Case Number 75515, Solyom versus Maryland National Park & Planning.

THE COURT: Counsel, identify yourselves, please.

MR. MULLIGAN: Tracy Mulligan and Edwin Vieira for the Plaintiffs.

MR. SASTRI: D. Sastri for the Park and Planning Commission, Defendant.

THE COURT: All right. Can you tell me about what time, when the amended complaint was filed in this case, as opposed to the second amendment filed? Counsel for the Plaintiff, just roughly the time frame.

MR. MULLIGAN: About a year later, Your Honor, because it was filed after the Montgomery County—of not being the one responsible for the court records, and de-

ferring to the Department of Assessment and Taxation being responsible for the land records. That was the reason that the Department of Assessment was added.

THE COURT: That was entitled, "Amendment to Complaint," then; is that right? That was an interlineation?

MR. MULLIGAN: That is correct.

THE COURT: So that the document, then, that we are proceeding on is the original complaint of the issue; is that right?

MR. MULLIGAN: That is right.

[4] THE COURT: All right, I told you at the close of the day yesterday, gentlemen and ladies, that I would give you each about three minutes to make a final pitch, if you care to, just to recap your arguments, since we are starting again this morning.

Does Plaintiff wish to make a statement?

MR. MULLIGAN: I only say one thing, Your Honor. I take it Your Honor is deciding the motion to dismiss. Mr. Sastri has not put in any evidence that the proclamation has, that he has in his possession, questions. So, I cannot in good conscious say that Plaintiff ought to win at this stage, because I don't know what Mr. Sastri has.

He had a motion for summary judgment in front of Judge Beard, which Mr. Sastri said he had aerial photographs and other kinds of evidence. Maybe we will see them here.

As far as the other point he made with respect to the '77 conveyance, I simply cannot understand how a conveyance by the grandchildren in 1977, has anything to do with whether the children gained interest possession in 1938, 1939. We filed a memorandum of law. I presume that Your Honor has read that memorandum as carefully as you have done everything else in this case. If you have

read that memorandum and you listen to the same evidence I have listened to, you have to deny the motion to dismiss.

MR. SASTRI: Your Honor, very briefly. I would [5] like to call to the attention of the Court the fact that Ms. Lane shared with Morton Funger the compensation for the small strip of property called overlap property, which is one thing that I did not mention yesterday that is a part of the settlement transaction. So, sharing with Funger the compensation is also a clinching piece of evidence.

That is all I wanted to do.

THE COURT: Let me say this at this point. First of all, the Defendant has moved to dismiss Plaintiff's case at this stage. This is a trial before the Court, and not a trial before the jury, and that is what distinguishes the motion for summary judgment from the Court's ability to rule on the motion at this time.

The motion for summary judgment simply says that there is a dispute of the facts that may lead the trier of fact to a conclusion other than what either party was contending for at the outset.

I have now received all the evidence pertinent to the Plaintiff's case that the Plaintiff chooses—the Plaintiff, after all, having the burden of proof in this case—to put in. Under Rule 2519 of the Rules of Procedure, particularly Rule 2519(b), when a Defendant moves for judgment at the close of the close of the evidence offered by the Plaintiff in an action tried by the Court, the Court may proceed as the trier of fact at that point to [6] determine facts and to render judgment against the Plaintiff, or may decline to render judgment until the close of all of the evidence.

So, the posture is different now than it was from when a motion for summary judgment was filed, because I now may look at the case and say, I am reading the Plaintiff's evidence, and while a reasonable trier of fact may find

in Plaintiff's favor, I now, as the trier of fact reviewing it can decide that I do not find in the Plaintiff's favor, even though some other reasonable man might have.

Were it a jury trial, I would be required to deny the motion at this point, and would do so. I don't say at this point that I grant the motion necessarily, but I want everybody to understand what the scope of my authority is at this point. I am not merely trying to decide whether reasonable men can differ; because I am the trier of fact in this case, I may make a judgment based on the evidence that I have before me.

Certainly, the problem is at this posture that not having given the Defendant a chance to present his evidence, I cannot grant judgment for the Plaintiff, because the Defendant would be entitled to offer; but if reading the evidence, I feel that there is no way I could grant judgment for the Plaintiff, I am entitled under the rules to do so. So, please understand what I am doing as I [7] proceed heretofore.

In this case, we are dealing with an action to remove a cloud from title to properties that are in the Chevy Chase section of Montgomery County. The property, in essence, is a former railroad—for want of a better term at this point, I will call—right-of-way in a parcel that appears in the Friendship tract of Montgomery County.

For sake of reference hereafter, it may be helpful to think of the right-of-way as something of an inverted wishbone divided into four quadrant, surrounded by property divided into four quadrant, so that one can make more or less convenient reference to various owners and geographic aspects of the case.

The background of the case is essentially this, once upon a time there was, in the latter part of the 19th century, a tract of land of some eight acres in the northeast corner of Willard Avenue and River Road, purchased in 1875 by

Lewis C. Solyom, who was the grandfather of the Plaintiff, Richard L. Solyom and also Warren Churchill, deceased, who was the husband of Plaintiff of Ross Taylor Churchill, now represented by a personal representative. It was a single parcel.

Mr. Solyom owned that property, and had children that lived there on that property with him. The time came in approximately 1890, when Mr. Richard Solyom entered into [8] negotiations with representatives of the Glen Echo Railroad Company to permit them to acquire rights to pass over that quadrant, so to speak, by running a strip, roughly, down the middle of that property.

There were transactions, starting with what appears to have been a condemnation proceeding, but eventuating in a deed, from Lewis Solyom to the Glen Echo Railroad Company, granting them essentially, at first, a single strip that basically traversed the entire parcel, more or less, down the middle. That was done for the purpose of a granting, in a sense, a right of passage—well, let's not call it a right-of-way or anything at this point, simply a right to traverse the property.

Later on shortly thereafter, I think within the following year, that intiial strip was widened on either side, so that it became, essentially, 30 feet wide. We refer to that as the mainline strip now in total.

In 1896, the left fork, which is essentially the other leg of the inverted wishbone as I have described it, was added in a transfer by a deed from Lewis Solyom to the railway company. Without describing the contents of the deed at this point, it certainly did come to pass some time after 1890 that the Glen Echo Railroad Company or its successor—I think the name changed at some point—did enter on the property and lay track and other [9] accouterments of a railroad operation.

It happened that along about 1902, but certainly the evidence appears to establish no later than June of 1910,

the railroad company had abandoned its line across the former Lewis Solyom property. At that point, roughly beginning, at the Court recalls, about 1918, the Solyom family cinched the property both at the top and bottom, including traversing the portion of the right-of-way that went into and came out of the Solyom property, and began, in some fashion, to act as if the property was theirs, although I remark more about that momentarily.

Other historical facts of relevance are as follows: that Lewis Solyom, although he died in 1913, executed three deeds to his children by which he essentially divided the property into three, thirds. This is speaking now of all the property, rather than the right-of-way that just goes down. One deed was made in 1897. The second deed was made in 1911.

Let me ask this, counsel, were there two deeds from Lewis Solyom to the children, and then one from the children to the children? I apparently misapprehended this.

MR. VIEIRA: Your Honor, there were two deeds prior to his death. His will transferred the property.

THE COURT: Oh, his will. I thought that there were three——

[10] MR. VIEIRA: Then one of the children later, carrying out the intent of the will, transferred the property to——

THE COURT: All right, but essentially then, there were three transfers by Lewis Solyom: two during his lifetime and one by his personal representative? Am I correct?

MR. VIEIRA: That is correct, Your Honor.

THE COURT: So, each of the three children got a parcel. All right. That is the way that that matter is stated then. All right.

Those transactions essentially divided up what had been the sole eight-acre parcel. It is significant to note, and the Court will refer to this fact, that in each of those deeds, clearly there is no conveyance of what had been defined as the right of passage or right-of-way that had earlier been deeded to the railroad in three separate deeds in the latter decade of the 19th century.

In any case, along about 1918, the Solyom family or members of the Solyom family who owned these individual parcels within the former single tract, erected a fence at either end of the entire tract, including traversing the right of way on either side; and for a period of time thereafter, continuing more or less up to the present time, in various fashions or another, did attempt to keep [11] trespassers off the property who would use the former right-of-way at the path or an access to get to a park, and otherwise posted no trespassing signs, and acted in some fashion as if the property was their own.

The following other facts bear knowing. That in 1920, the Washington Suburban Sanitary Commission entered the property, apparently without protest—there is no evidence that they were either given permission or any protest to their presence was made—and laid a sewer line along the former right-of-way, which had been abandoned, and continued to maintain that sewer line, up to and including, certainly, 1952, when further construction was made, and even thereafter. Again, entering more or less without protest.

In 1938 or 9—the Court is not exactly sure—the successor or the trustee of the former railroad conveyed its right, title and interest in any properties that it owned, which presumably, at least at that time, the trustee comprehended the right-of-way on the Solyom property, to a transit company, which subsequently transferred its property to a group owned by—is it Perrito, is that the name of the individual?

MR. VIEIRA: Yes, sir.

THE COURT: Then the Perrito group eventually transferred its ownership of property to a group owned by [12] Morton Funger, and that included the right-of-way, or so they believed.

In 1977, the Maryland National Park and Planning Commission, a Defendant in this suit, determined to take, to buy up all right, title and interest to the entire former eight-acre parcel, for whatever purpose, it had in mind.

MR. SASTRI: Not eight, Your Honor. We have excluded three acres; about five acres.

THE COURT: All right, the remnant of whatever was the former eight-acre parcel—and wished to clear up any issue as to who owned what within that remaining parcel of the Solyom tract.

A contract of sale was executed, and subsequently, a deed executed, joined in by all the heirs of Lewis Solyom, except the Plaintiff Richard Solyom, and I believe, except Warren Churchill or his heir——

MR. SASTRI: Warren Churchill was a party, Your Honor.

THE COURT: All right, Warren Churchill was a party. Let us say, then, that Richard Solyom did not join in that transaction.

In that deed, the parties purported, with the exception of the Plaintiff, Richard L. Solyom, to convey their respective interests in the various property that [13] was comprehended by the remnant of the former Solyom tract.

It is significant that in that deed, there is a recital that certainly as to mainline strip, that property was, quote, unquote, owned by Morton Funger. That certainly as to the left fork strip, there was some sort of ownership interest in Funger, and also, perhaps, some ownership in-

terest on the part of the Solyom heirs, although it is not clear exactly who was claiming what in the left fork, but all of those matters were resolved, in fact, by the conveyance that was made, with the exception, of course, of whatever interest would survive as to Richard Solyom, who is not party to that transaction.

So, in a sense, the question that we have before us is simply what interest, if any, Richard Solyom had in either the mainline strip at any point in time, and what interest did Richard Solyom have in the left fork, and notwithstanding the transaction of 1977.

Richard Solyom is before the Court today contending that in fact he had at least a one-ninth interest in the left fork. I believe now, because he has taken an assignment of rights by all the other Solyom heirs' claims, essentially, the totality of interest in the mainline strip with some variation. The left fork, incidentally, consists more or less of 4,000 square feet, and the mainline strip, essentially, 22,000 square feet or that amount.

[14] Now, we are faced with a request by Mr. Solyom to recognize that he is in fact the owner of these respective interests, in these respective pieces of property, and to buttress his claim for those properties, he asserts two theories, two legal theories that he relies upon.

First of all, he alleges that the transfer that was initially made by his grandfather, Richard Solyom, was not a transfer in fee. That is, in perpetuity, a maximum bundle of rights type transfer as to the presence of the railway, but merely an easement, that is, a right of passage. That because it was merely an easement that was transferred, when it was abandoned by the railroad—and incontrovertibly, it was abandoned no later than June of 1910—that by act of law, the ownership of that property reverted to Lewis Solyom or his heirs. That is his first theory.

The Court accepts as a correct proposition of law that if in fact an easement only was granted in connection with the transfers of the property by Lewis Solyom, that if there has been an abandonment, then there is indeed a reversion to Lewis Solyom or his heirs. To that extent, Mr. Soloyom would prevail.

The second alternative theory that is put forth by the Plaintiff in this case is that even if the property in question, this is the inverted wishbone that we have described as a right-of-way, was not an easement that **[15]** reverted by reason by abandonment, it may at one time have been owned by the railroad, but by reason of its adversed possession by the heirs of Lewis Solyom, activing collectively that property, by proscription, became the property of the heirs of Lewis Solyom, and that therefore, with the passage of 20 years they were the title owner at some point in time.

Certainly they alleged, perhaps, different dates; perhaps by 1930 they became the heirs. Perhaps by 1938, they became the—excuse me, the owners. Perhaps by 1938, they became the owners. But in any event, it is their contention that they became the owners by reason of adverse possession for 20 years of unbroken ownership in which they hostilely, actually, visibly, exclusively and continuously claimed title all those elements combining simultaneously, to satisfy the doctrine of adverse possession.

Of course, the doctrine of adverse possession is one that is available, assuming that all the elements have been met.

The Court, at this state, as I indicated earlier, is permitted to weigh the evidence that the Plantiff has put forward, and to see whether, not only a prima facie case has been met, but whether the Court is persuaded to agree in favor of the Plaintiff. If the Court had any doubt about it, the Court could deny the motion and go **[16]** forward, and permit the Defendant to put on evidence.

If the Court, however, reading the evidence in the light most favorable to the Plaintiff, still is not persuaded—since the Court is the trier of the facts—still is not persuaded that the case has been made, then the Court is authorized, pursuant to the cited rule, to grant the motion to dismiss at this time.

Let us then turn to the evidence and go through the analysis to see whether the case has been made by the Plaintiff. The Court would make one caveat in this regard. This is not a case where the Court is required to find that any witness has testified perjuriously. The Court believes that the witnesses and the Plaintiff, in particular, are people of good will, are people of good faith. They testified honestly and openly to the best of knowledge about facts that obviously are, in many cases, dim and in the past, and hard to pin down. This case is not one which is decided, in any respect, in any respect, by the Court believing anything other than the parties are people of integrity. It is a very important thing to bear in mind as we proceed.

First then, let us look at the theory presented by the Plaintiff that this was merely an easement which was abandoned by the railroad, and as to which there was then an automatic reversion. Let us take the easy point first.

Was there an abandonment? Of that, there can be [17] no doubt. The Court is convinced, and I would think the Defendant under any set of circumstances, would be hard pressed to prove contrary, that this railroad strip was abandoned by June of 1910.

So that I suppose the second element is satisfied beyond—adventure. The first question, then, is, do we have an easement, because if we have an easement, then you have got an abandonment, and you have got a reversion to Louis Solyom or his heirs.

On the other hand, if the transfer was made in fee, then you have outright ownership, which simply would not

revert by reason of abandonment. It might be subject to adverse possession, but it does not revert automatically by abandonment.

The Court at this point then is required to turn to law that would seemed to be applicable in this case. A recent case of Gilchrist versus Chester, which was just reported and file on September 5, 1986—that gives me six days. It is still hot, so they say—gives the Court, I think, the relevant guidance in this case.

That case, essentially, makes this admonition to the Court. The question in dealing with deeds is whether the Court is confined to the four corners of the document to determine what type of grant is made, or whether the court may look beyond that document to the parol evidence, [18] to letters, to understandings, to other transactions that are going on in the neighborhood, to see what might have been in the minds, or indeed was in the mind of the parties when they executied this final document.

Gilchrest versus Chester just decided—it does not have, of course, a cite. I am reading from the slip opinion at this point. It makes it clear that giving testimony that would vary the patent meaning of terms of a document is inappropriate. It violates the well settled rule against altering or changing the terms of unambiguous writing.

Here is a citation from an earlier case. That the clear and unambiguous language of an agreement will not give way to what the parties thought the agreement meant or intended it to mean. Where a contract is plain and unambiguous, there is no room for construction; and it must be presumed that the parties meant what they expressed.

Thus if in this particular case, in the Gilchrest case, if the deed was clear and unambiguous, in the absence of fraud or mistake, there was no need to construe it through the use of extrinsic evidence. In the Chester case, there was an issue of the possibility of a reference to a legal

description or—which seemed to suggest a different use for the property that would be inconsistent with fee ownership. The Court of Special Appeals permitted parol evidence [19] to come in and explain that.

That is precisely the point on which the Court of Appeals reversed and said that that sort extrinsic evidence, absent an allegation of fraud or mistake, was simply inadmissible. Reference was made to Section 2101 of the Real Property Article of the Code, which suggests that the grantor's whole estate typically does pass, unless a limitation or reservation shows, by implication or otherwise, the different intent.

But, in any event, the Court says that it is important to bear in mind the often repeated doctrine that doubt should be resolved in favor of the unrestricted use of property. That is the legal framework, if you will, that the Court must use to evaluate this transaction, what has turned out as the 1890 deed from Lewis Solyom to the railroad.

First of all, let us talk about the fact that we are dealing with an individual and a railroad, at that point. The law is clear that as to a right-of-way, a railway may take a right-of-way either in fee or as an easement. It may well be that a railroad usually takes a right-of-way only as an easement, but it is by no stretch of law or practice, the exclusive way by which the railroad might take ownership.

That said, what does the deed of 1890 say? The [20] deed of 1890 says that Lewis Solyom makes a grant in fee, and specially warrant of that fee that is transferred. It appears in every particular to grant the most complete bundle of rights with regards to the mainline strip at that point that we are speaking of. It in no way says that this is simply an easement, except to the extent that there is a possibility of reverting, if a railroad is not constructed in six years, I believe is what it says. That is the second deed.

MR. SASTRI: Six months.

THE COURT: Six months.

MR. SASTRI: That is only in the '86 deed.

THE COURT: In the what?

MR. SASTRI: In the 1896 deed.

THE COURT: All right. Let me strike that last reference, then.

In the first deed, there is no reference, other than the transfer of the property in fee, to have and to hold, et cetera, et cetera, just as if one might transfer outright ownership.

Now, there is some suggestion that there is ambiguity in that clause that ought to invite the attention to the extrinsic evidence. But the Court frankly believes that there is no ambiguity in that clause. The language is plain and simple. It is perhaps, if anything, more **[21]** simple and more plain than the language in Gilchrest versus Chester, which at a minimum, makes a reference to another document which does raise an ambiguity. But the Court of Appeals in Chester would not even go outside that document—outside the deed to look at the other document.

So, it is clear from the 1890 deed that there was a transfer in fee, at least by that deed. Now, I want to comment on a couple of things.

The Court feels under the Chester case that it is not even permitted to go beyond the 1890 deed to establish that anything other than a fee simple transfer was made. But, in fact, let us suppose for present purposes, that the Court did so, which is one reason why the Court permitted in evidence, finally, some of that extrinsic correspondence.

The fact of the matter is that the extrinsic correspondence in this case between Mr. Solyom, Sr. and the representative of the railroad and Mr. Solyom's solicitor, as I recall, immediately perceives that there is a discrepancy

between the way the deed in 1890 reads and the possible perception on the part of Mr. Solyom that all he intended to grant was an easement.

But the deed, objectively speaking, says "fee," and the lawyer says to Mr. Solyom, no, there is a question here. It is not what we bargained for. It is a different animal.

[22] Now, at that point, and I don't want to point the finger 90 years after the fact, but at that point, had there really been a misrepresentation of the transaction, an action for reformation was available in equity immediately to correct the contract that was misconstrued.

Failing that, you are left with the four corners and the objective meaning of the document. We have always consistently in this State applied the objective theory of contracts, if you will. A contract of sale in a deed in a sense is no more than a contract or a variation of it. Anyone reading that document simply has to conclude that objectively, a reasonable person reading that document would understand that a fee had passed, and not an easement.

Whatever was in Mr. Solyom, Sr.'s head, may have been so, but that is not the basis for making the determination that you make as between a fee and an easement. That is simply not the law of this State, or I suspect, of any other.

Let me make another reference to the fact that we are all well aware of. That at or about the same time, there was a proceeding pending in this court involving another segment of the right-of-way and some other property owners, who were more or less—well, I am not sure how well they were contiguous, but they were along the line at some point, and they also had their differences of **[23]** opinion with the railway as to their right of ownership.

In that case—that was decided, incidentally, around 1913, although it pertained to rights that apparently came

into being at about the same time that Mr. Solyom made his first deeds to the railway. In that case, the Court decided that there had been a condemnation, and that the condemnation simply resulted in an easement, the abandonment of which would cause a reversion to the Loftborough people.

That may well have been, but there are numerous distinctions between that case and this. First of all, that was a condemnation, and there was no deed into which that condemnation merged. There was no deed that said all the condemnation proceedings are merged in this transaction and extinguished hereby. In the absence of that deed, the Court in 1913 may well have been pronounced incorrectly the law as it existed in 1890 or '91, but that really is not so important as to say that there was no deed in those comparable transactions to suggest that that presents a compelling reason, much less a conclusive reason that the parties might have understood that something other than a fee was passing.

It is also true to suggest that maybe somebody at the time of 1890 or '91 situated in Mr. Solyom's position would understand that he was really only dealing with a transfer of an easement, rather than a fee.

[24] The problem is that it is equally plausible that Mr. Solyom, Sr., because of his particular opposition to the railway coming over, may well have been perceived as the kind of person who would be so cantankerous—although I don't mean to cast any aspersion upon him, I am only theorizing here for a moment—but he might have been perceived as so cantankerous that the railroad would determine that we have got to get a fee from this guy and not an easement, because he will be on our backs every whatever years to say that we have abandoned the railroad and be claiming ownership. Let's resolve it once and for all by taking the fee.

That may or may not have happened. All it suggests to me is, that one is safer, and the policy of the law, I believe, fulfills when you stay within the four corners of an unambiguous document. That is what you do in this case. Therefore, the Court must conclude that as of 1890, Mr. Solyom, Sr. transferred an interest in fee simple.

Now, what do we do with regards to the subsequent deeds that come along? The deed that widened the mainline in 1891 and the deed that granted the left fork. Here, the Court has to go into a slightly different analysis, because those deeds speak in terms of right-of-way. It is true——

MR. SASTRI: No, Your Honor. The second deed also grants and—without talking about right-of-way. Only **[25]** the description is identified by saying center line. That is all.

THE COURT: I thought the second deed referred to right-of-way.

MR. SASTRI: No, second deed did not, the third deed.

MR. MULLIGAN: He calls it a right-of-way.

THE COURT: He calls it a right-of-way, I think at some point——

MR. SASTRI: Center line.

THE COURT: Let me look at it.

MR. SASTRI: What was—is not right-of-way.

THE COURT: Yes, there is a reference to right-of-way—I correct you on that—in the 1891 deed.

MR. SASTRI: Thank you.

THE COURT: The 1891 deed specifically says that they are—an addition strip of land, five feet in width to each side of that portion of the present right-of-way. They use that language. That is what they say. That word "right-

of-way" appears in the 1891 deed, and again in the 1896 deed.

We have to start with this premise, that a right-of-way ordinarily imports an easement and not a fee; and here is a deed one year later, talking in language that would tend to suggest an easement. The 1896 transfer of the left **[26]** fork also talks in terms of right-of-way and not fee. Again, ordinarily importing an easement, rather than a fee.

On the other hand, too, it is clear that the right-of-way is not always an easement. That the word "right-of-way" may well involve transfer of the fee. There is an ambiguity there that one has to contend with.

What do you do when faced with the ambiguity that is created by the use of the term "right-of-way" in the 1891 and "right-of-way" in the 1896 deed? That is the case in which you go to the parol evidence. That is the case in which you are required to go to the extrinsic evidence, because while a right-of-way may ordinarily import a fee, the fact that it is only ordinarily so, suggests that there are circumstances in which it does not, and therefore, you must permit or you must consider those circumstances to determine whether in fact this is one in which a fee was intended, rather than an easement.

Where do you go first when you look at extrinsic evidence to the 1891 and the 1896 deed? You go back to the 1890 deed. That is where you go back, because the 1890 deed defines the mainline in the first instance. The 1891 deed just adds increments to that mainline strip. The 1896 deed finally just adds a leg, if you will, to the entire transaction, which was to give this right of passage to the railway.

[27] The 1890 deed, for reasons just given, incontrovertibly says that it was a fee that was transferred and not an easement. It would be implausible, although it is theoretically possible, but extremely implausible, to think that

the middle part, the major part of the mainline transfer was in fee, but the increments of five feet on either side a year later, were intended to be as an easement.

Now, let me make another footnote observation. It may well be that Lewis Solyom, at that date, understood that he was only transferring an easement and not a fee. I have no doubt that he, as his grandson, was a man of integrity and honor, but we are bound by the objective appearances in this case. Maybe the lawyer should have sharpen it up somewhere along the way, but there it was.

When you go back and unscramble this, unfortunately, somewhat badly scrambled egg, you find that it was a fee that was transferred in 1890, and that the language in 1891 and again in 1896, though referring to right-of-way, has to go back to the transfer in fee and nothing more.

Is that incorrect analysis? Does late history, to some extent, support the Court's analysis in this regard? I submit that it does. When you go to the two deeds that Lewis Solyom executed in 1897 and again 1911, he is making a transfer which excludes the right-of-way. And in so doing—although I am not absolutely certain this is so, but in [28] making a transfer which excludes the right-of-way, he is suggesting that perhaps he no longer owns it, that he has already transferred it to somebody else.

Did he believe that? I don't know. Does the evidence tend to suggest that perhaps he believed that? Yes. The Court does believe, therefore, that it was in fact a fee that was transferred.

Having come to that conclusion, then, the Court is obliged to reject the Plaintiff's first theory of recovery in this case, and find that it was a fee and not an easement that was granted. Therefore, there could be no automatic reversion upon abandonment. The Court, therefore, to that extent, agrees that the—that theory of the Plaintiff's case must be dismissed, because there is not, in the Court's

view, allowing, as the trier of the fact, full play of the evidence as presented by the Plaintiff, a case made for the establishment of an easement.

We turn now to the second line of argument that the Plaintiff offers in this case with regards to its claim. That is that although now the property has been established as owned in fee by the railroad and its successors, there has been adversed possession by Lewis Solyom and by the heirs of Lewis Solyom over varying periods of time that would require the Court to acknowledge Richard Solyom's ownership interest today.

[29] The basic principle of adverse possession is reasonably easy to articulate. That is, if for a period of 20 years a party simultaneously makes a claim of title to a parcel of property, openly, hostilely, actually, visibly, exclusively, continuously, as against the true owner and the world, that property may pass by proscription to the person who is making that claim or to the people with whom he is in privity.

What do the facts show in this case? No question that from a period preceding 1890, and continuing even to 1986, to this very day, there are heirs of Lewis Solyom on at least all or part of the four quadrant, as I described that parcel. There is no question but that for a period certainly beginning no later than 1918, and even to this date, that fences have gone across the bottom and top of that property, both of which have traversed the former right-of-way.

There is no question but that the heirs of Lewis Solyom have acted in great part as if this were their property, shooing off trespassers, keeping if fenced, barking dogs and the like. The question is whether each and everyone of the elements that are required to be fulfilled in this case are in fact fulfilled. We shall review those at this time to determine whether in fact this is so.

[30] Now, again, before I go any further, the fact that there had been abandonment by the railroad as of June 1910, would not in and of itself establish a claim by the Plaintiffs. They would still themselves have to possess the property in some fashion or another, hostilely and adversely, to the true owner.

The claim in the first instance is that by 1930, the Solyom's had acquired title by adverse interest. Then the Court heard yesterday in argument from Plaintiff's counsel that perhaps it was 1938, which I believe would be 20 years from the placement of the first fences on the property, or at some period of time up to certainly 1977. There was a 20-year period where the doctrine was applicable, and made Richard Solyom or his predecessors owners of the title by adverse possession.

These are the facts that the Court regards as salient in analyzing whether all these elements have been met. I recur now to the deeds that were executed by Lewis Solyom during his lifetime to two of his children, and the third deed that was executed by his personal representative to the third child.

What is significant about these three deeds, and the last one dates 1914, is that they all exclude the right-of-way. None of them include the right-of-way. Now, these are documents that are being executed by people in the [31] family, and they themselves are acknowledging in writing, as late as 1914, that they don't have any claim of right in this property, because they are not conveying it, they are not acting as if they are owners in any fashion.

That fact is significant, because to look for facts which after 1914 would tend to suggest that they were really acting as owners, hostilely, openly, claiming as owners. The Court thinks that some sort of compelling evidence needs to be put forth, not more than, obviously, a preponderance of the evidence, but some sort of compelling evidence needs to be put forth to convince, to persuade that

the Solyom family, assuming for a moment that they can all act collectively in this matter, considered the property to be theirs.

Let us take for a moment the 1910 as the marking point or 1918. The Court first looks at an incident that occurred as of approximately 1920 on the property. As of that date, in 1920, the Washington Suburban Sanitary Commission, entered upon that right-of-way, directly from bottom to top, top to bottom, and laid its sewer line. Now, there has been a suggestion that they were the government, and because they were the government, the doctrine of adverse possession can apply; and because they were coming in and taking an easement, that that would not in any way affect the adverse possessors' rights to claim the fee.

The Court is more persuaded by the fact that the **[32]** Sanitary Commission was there at all digging—which was, I think, Mr. Solyom's testimony—was there at all in 1920, without any established rights to be there. Of course, the Sanitary Commission had the right to come in there by condemnation and take an easement. Of course, the Sanitary Commission had the right to negotiate with the owner of the property to take an easement by deed, but there is no record—indeed I understand that the record has been searched—and there is no document which establishes that the Sanitary Commission had a right to do that.

The Sanitary Commission had a right to do that. The Sanitary Commission simply came in and started digging. What does that say as of 1920 about whether the Solyom family understood itself to be the owner of that former right-of-way against the world?

What it suggests is some evidence, albeit imperfect, but some evidence that perhaps the Solyom family—again, allowing for a moment that we can treat them as a collective unit—believed that somebody else was the owner of that property, was not in fact claiming it in fee. Now, one may think, well, some members of the family did not

believe that, but one has to read objective evidence now, 66 years after the fact, and try and understand whether there was in fact that holding out, if you will, against the world.

We are, after all, ladies and gentlemen, seeking [33] to dispossess somebody who claims ownership of that property. Is it enough merely for some members of the collective unit to think that they are owning it adversely, when in fact there is, at least, another record owner of that property.

After 1920, it is clear that the Sanitary Commission continued to enter upon that property, apparently without opposition to do some servicing at one point or another, of the property. Certainly as of 1952, I believe, there was further construction on the property, pursuant to an easement that was granted by the record owner of the strip, and construction was undertaken there. Again, with no opposition at any point voiced by the Solyom family, to the extent that we can see that.

So that the first element, frankly, of hostile claim, the Court is not persuaded, balancing the evidence and trying to make a determination, that the Plaintiff's case is made in that regard. There are other aspects of the case, because this, after all, was a decision that one comes to kind of by—at the end, when you try and weigh all the different factors. There are a lot of things that don't persuade, other things that persuade more than others; but there are other things in this case that are equally difficult.

The fact of the matter is that this former single Solyom tract was divided, at least into three. Although the [34] members were related by blood, and they were on good terms with one another to the extent that they did not have fences at or among themselves, the Court is asked to accept the theory that they were acting of one mind, over a period that perhaps began as early as 1918, and continues to date.

That is an extremely difficult concept to accept, that there was any kind of a meeting of the minds, if you will, with regards to this strip that we are owners and will continue to act as owners.

Of course, they continued to use it collectively. Of course, they continued to play on it; but did they hold themselves out with any kind of collective understanding. Maybe they thought they did, but the Court is not persuaded that that is the kind of interaction and joint decision that permit them to be considered as a sole unit. It is not persuasive merely that they are related and that they used the property in common.

After all simultaneity of all of these elements for the 20-year period is a requirement. Based on the rather vague suggestion that there was collective action for any 20-year period, the Court is not persuaded, particularly since, as I have said, as late as 1914, the parties were clear that the right-of-way was not theirs. That is clear evidence that they knew it was not. So, the evidence that they thought it was is unbalanced—and the Court as the [35] trier of fact—not particularly persuasive. So, there is, finally, that aspect of the case that the Court must come down upon.

When the transaction got to 1977, and negotiations began with the Park and Planning Commission, we have what the Court feels is yet another indicia of the fact that someone other than the Solyoms owned the property. Bear in mind, it is not what one or more members of the Solyom family had in their heads that rules here, but there are other—one has to try and reconstruct history as best one can, based on the data that is available, and not merely what is said in court many, many years later.

In 1977, when the contract was drawn for the sale of whatever rights, title and interest, most of the Solyom heirs, with the exclusion of the Plaintiff had in the property, they drew a document and signed a document which

said that Morton Funger owned, at a minimum, the main-line strip, and there was no claim there. That is what it said.

Now, it is not a question of estoppel. It is nothing of that matter. It is merely a piece of evidence. It is a document that recites that somebody, and not they, are the owners of the property, and they signed it. Here I am now, 20 years after the fact, trying to determine what they thought about that ~~parcel of~~ property, that inverted wishbone, if you will—no, just the one leg of it at this **[36]** point, the main-line strip—in 1977.

They are, all the heirs of Lewis Solyom, people that he says, historically, have acted collectively as if the property was theirs, are saying that somebody else owns it. Morton Funger owns it. How did Morton Funger become the owner of the property? That is not so relevant to me as the fact that there is an acknowledgment that he was the owner.

There is no transfer before 1977 by any Solyom heir to Morton Funger. The only claim of right, the claim of title that Morton Funger had before 1977, was the title he took from the successors and interest of the Glen Echo Railway. He is the one who came to them, and the heirs of Lewis Solyom, other than Richard, are saying that Morton Funger owns the property. They, ultimately, are acknowledging that they are not the owners. That is the best evidence that the Court has available to suggest that they knew that and that they were not adversely possesssing.

Oh, yes, perhaps on other days, they thought they were the owners; but when you tote up, the hard evidence is here, you got them acknowledging that Morton Funger is the owner, and there it is. Richard Solyom perhaps was not the one who believed that, but we have the testimony in that document, a testimony in that document, that the other heirs so believed.

Now, with regards to the left fork, the smaller [37] part of the inverted wishbone, it is true that the transaction of 1977 makes a joint conveyance of whatever interest the Solyom heirs had and Morton Funger, in the left fork to the Park and Planning Commission. There is a suggestion that they may have owned some interest in that property.

They may well have believed that they did own some interest in that property, but again, it is not conclusive one way or another what they did own. Morton Funger certainly seems to suggest that he owned it. The question is unbalanced, well, who owned it. We are really at that point back to our recent analysis of adversed possession. Was that left fork adversely possessed, since it clearly was not comprehended by any claim of title by the Solyom heirs.

The same analysis really applies, that the left fork was treated identically to the mainline fork that was entered upon by other claimants during its history, and was not so adversely possessed in distinction to the mainline.

Another item not mentioned in my summary of the facts, but relevant as the Court recalls now, is that when River Road was widened and part of the right-of-way was taken, along with part of the lower portion of the former Solyom tract, there was no compensation paid. I believe that was 1960 something; '62, am I correct in that?

MR. SASTRI: '62, yes.

[38] THE COURT: 1962. There was no compensation paid in 1962 to any Solyom heir for that portion of the road widening taken that covered the right-of-way.

Now, again, one reads this as an item of evidence. If somebody in the Solyom really believed that they owned the property in 1962, that by proscription for a 20-year period prior to 1962, they had become the owners, why weren't they around in 1962 raising the roof and demand-

ing compensation for that portion of the right-of-way that was taken by the State. If they owned it, they were entitled to it. Whether they had ownership by reason of a deed, or whether they had ownership by reason of an adverse possession.

Again, it is not an estoppel argument. It is simply datum in this case that the Court looks at to say what does the Solyom family understand that they own. Again, some people on different days may have had different thoughts in their different heads; but the Court has to go to the hard evidence in this case, and there is this continuous suggestion that many people, some of these Solyom people, on many occasions—certainly the time when it came to write it down—seemed to understand that somebody else, other than they, had a claim to this property.

That is all it takes, that somebody else is—that they are showing some acknowledgement that maybe somebody else had a claim. Even if, ultimately, the Solyom [39] people were acting to exclude the rest of the world from that property, as long as they let somebody make a claim, inconsistent with their absolute fee type ownership, they were not satisfying the requirements of adverse possession.

Were the Solyoms de facto possessors of the land? In a real sense, of course, they were and continue to be. But were they the legal owners of the strip? The Court must conclude that they were not. That they did not satisfy, do not satisfy the issue of adverse possession, all the elements that are required to be proved.

I conclude where I began. The parties to this case, and I include the Defendant as well, are of goodwill. I in no way mean to suggest that any party acted inappropriately in bringing this suit or vigorously pursuing this suit, or in presenting what evidence was presented. I might particularly commend counsel in this case for what I think was—once we got our briefs filed—an exceedingly sharp case,

where one can be pulled and tugged, as I have been in the course of this case.

I have read your briefs carefully, which are extremely well crafted, and I think we have hit on the applicable points of law. Certainly, I would suggest to you, and it is always something I try and do when I have to acknowledge that one side wins and one side loses, to say that counsel's performance has been really extremely [40] good, and I appreciate the information that you have given me, and I have done my best to digest it.

The Court, accordingly, grants the Defendant's motion to dismiss at this time with costs to the Defendant. Of course if I am wrong on this case, there are other higher courts that can tell me so. Then that is the right that you have to pursue.

I don't know how this decision now affects immediate activities in the parcel. Is that something the Court needs to address, Mr. Sastri?

MR. SASTRI: Not necessarily, Your Honor.

THE COURT: All right, counsel, is there anything further that I need to hear from you at this time?

MR. MULLIGAN: I would just like to say one thing, Your Honor. I have been to a lot of federal courts and state courts, and I think that the way Your Honor conducted this trial is exemplary. Of course, I disagree with your result, but that is why we have Appeals Court.

THE COURT: I appreciate your remark, and I wish I could make everybody happy all the time, but sometimes we cannot.

MR. SASTRI: I have the same posture, Your Honor. It has been a great experience to be in front of you.

THE COURT: Thank you.

(Whereupon, the hearing was concluded.)

[41] CERTIFICATE

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

EQUITY No. 75515

RICHARD SOLYOM

ROSS TAYLOR CHURCHILL

v.

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION
A PUBLIC BODY CORPORATE

WASHINGTON SUBURBAN SANITARY COMMISSION

MARYLAND STATE DEPARTMENT OF
ASSESSMENT AND TAXATION

v.

MORTON FUNGER

HERMEN GREENBERG

ALBERT H. SMALL

RALPH OCHSMAN

SAMUEL P. COHEN

By: /s/ADRIENNE D. PLATER
Adrienne D. Plater, Transcriber

ORDER OF THE COURT OF APPEALS OF 20 NOVEMBER, 1987, DENYING APPELLANTS' PETITION FOR A WRIT OF CERTIORARI

IN THE COURT OF APPEALS OF MARYLAND

Petition Docket No. 308

September Term, 1987

(No. 1393, September Term, 1986,
Court of Special Appeals)

RICHARD L. SOLYOM et al.

v.

THE MARYLAND-NATIONAL CAPITAL PARK
AND PLANNING COMMISSION et al.

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answer filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ ROBERT C. MURPHY
Chief Judge

Date: November 20, 1987

ORDER OF THE COURT OF APPEALS OF 10 FEBRUARY 1988, DENYING APPELLANTS' MOTION FOR RECONSIDERATION

IN THE COURT OF APPEALS OF MARYLAND

Petition Docket No. 308

September Term, 1987

(No. 1393, Sept. Term, 1986
Court of Special Appeals)

RICHARD L. SOLYOM et al.

v.

THE MARYLAND-NATIONAL CAPITAL PARK
AND PLANNING COMMISSION et al.

ORDER

Upon consideration of the motion for reconsideration filed in the above entitled case, it is this 10th day of February, 1988

ORDERED, by the Court of Appeals of Maryland, that the motion be, and it is hereby, denied.

/s/ ROBERT C. MURPHY
Chief Judge

NOTICE OF APPEAL

[Received Court of Special Appeals of Md 1988 May 2
AM 10:45 H E Friedman Clerk]

No. 53

IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 1986

RICHARD L. SOLYOM *et alia, Appellants,*

v.

THE MARYLAND-NATIONAL CAPITAL PARK
AND PLANNING COMMISSION *et alia, Appellees.*

**NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES**

Notice is hereby given that Richard L. Solyom *et alia* appeal to the Supreme Court of the United States from the final judgment of the Court of Special Appeals of Maryland entered in this action on 10 June 1987. The Court of Appeals of Maryland denied appellants' petition for a writ of certiorari on 20 November 1987 and their motion for reconsideration on 10 February 1987. (sic)

The decision of the Court of Special Appeals misapplied Maryland Rules of Procedure 1028, 1086, and 1087, and Maryland Code, Real Property, Section 14-108 in such wise as to deny appellants due process of law under Section 1 of the Fourteenth Amendment to the Constitution of the United States.

This appeal is taken pursuant to Title 28, United States Code, Section 1257(2).

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Attorneys for Appellants

[Certificate of Service omitted in printing]

TEXTS OF CONSTITUTIONAL PROVISION, STATUTE, AND RULES INVOLVED

United States Constitution, Fourteenth Amendment. Section 1. * * * nor shall any State deprive any person of life, liberty, or property, without due process of law * * *.

Maryland Code, Real Property, § 14-108. Quieting Title. (a) *Conditions.* Any person in actual peaceable possession of property, or, if the property is vacant and unoccupied, in constructive and peaceable possession of it, either under color of title or claim of right by reason of his or his predecessor's adverse possession for the statutory period, when his title to the property is denied or disputed, or when any other person claims, of record or otherwise to own the property, or any part of it, or to hold any lien encumbrance on it, regardless of whether the hostile outstanding claim is being actively asserted, and if an action at law or proceeding in equity is not pending to enforce or test the validity of the title, lien encumbrance, or other adverse claim, the person may maintain a suit in equity in the county where the property lies to quiet or remove any cloud from the title, or determine any adverse claim.

Maryland Rule of Procedure 1028(b)(1)(b). b. *Contents.* 1. What to Be Included. The printed extract shall contain such parts of the record as may reasonably be necessary for the determination of the questions presented by the appeal, and shall include: * * * (b) So much of the evidence, pleadings or other parts of the record as is material to any question the determination of which depends upon the sufficiency of the evidence, pleadings or other matter contained in the record to sustain any action, ruling, order or judgment of the lower court.

Maryland Rule of Procedure 1086. Review When Action Tried by Lower Court Without Jury. When an action has been tried by the lower court without a jury, this Court will review the case upon both the law and the evidence, but the judgment of the lower court will not be set aside on the evidence unless clearly erroneous and due regard

will be given to the opportunity of the lower court to judge the credibility of the witnesses.

Maryland Rule of Procedure 1087. Interlocutory Orders—When Reviewable. On an appeal from a final judgment, every interlocutory order which has previously been entered in the action shall be open to review by this Court unless an appeal has theretofore been taken from such interlocutory order and been decided on the merits by this Court.